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PORT OF SAN FRANCISCO

NOTICE OF CANCELLED MEETING

The following Regular Port Commission Meeting has been cancelled:

JUNE 10, 2003 @ 3 P.M.

A Special Port Commission Meeting is scheduled on:

JUNE 12, 2003 @ 3 P.M.
in the Bayside Conference Room @ Pier 1

NOTE: Effective June 24, 2003, the Port Commission Meeting will now be held in the Port Commission Hearing Room located on the second floor of the Ferry Building at 3 p.m.

San Francisco Port Commission
Pier 1, San Francisco, CA 94111
(415) 274-0406

ACCESSIBLE MEETING INFORMATION

Getting to Pier 1:
Pier 1 on the Embarcadero, at the foot of Washington St. The Embarcadero Station is the closest BART and MUNI Metro stop, located below Market St. at Drumm & Spear Streets. The nearest F-Line streetcar stop is on the Embarcadero at Washington St. MUNI bus lines serving the Pier 1 area are the 9, 31, 32 and 71. For more information about MUNI accessible services, call (415) 923-6142.

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Know Your Rights Under the Sunshine Ordinance. Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, please contact Donna Hall, Administrator at 554-7724; fax 554-5163; e-mail address Donna_Hall@ci.sf.ca.us; City Hall, Room 244, One Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Ordinance Task Force, the San Francisco Public Library and on the City's Website at www.ci.sf.ca.us/bdsupvrs/sunshine.

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SAN FRANCISCO
PORT COMMISSION

PLEASE NOTE THE DATE & TIME OF THE MEETING.

SPECIAL MEETING
3:00 P.M., THURSDAY, JUNE 12, 2003
BAYSIDE CONFERENCE ROOM
PIER 1, SAN FRANCISCO, CA 94111

The Port Commission Agenda as well as Staff Reports/Explanatory Documents available to the public and provided to the Commission are posted on the Port's Website at www.sfport.com.

AGENDA

1. **ROLL CALL**

2. **APPROVAL OF MINUTES** - May 27, 2003 Special Meeting

3. **EXECUTIVE**

   A. Executive Director's Report
   - Restarting of the Ferry Building Clock
   - Port Commission Meetings at the Ferry Building

4. **MARITIME**

   A. Request for adoption of a policy and program to eliminate discharges of wastewater and ballast water by Cruise Ships into the San Francisco Bay, directing the establishment of air quality and water quality advisory groups, and directing the preparation of incentive measures and enforcement mechanisms. (Resolution No. 03-39)

5. **PLANNING & DEVELOPMENT**

   A. Request for approval of Assignment and Amendments to the Lease Disposition and Development Agreement and Ground Lease for the Rincon Park Restaurants Project, located on The Embarcadero between Howard and Folsom Streets. (Resolution No. 03-40)

6. **NEW BUSINESS/PUBLIC COMMENT**

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. A member of the public has up to three minutes to make pertinent public comments before action is taken on any agenda item and during the new business/public comment period.

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It is strongly recommended that public comments be submitted in writing so they can be distributed to the Commissioners for their review. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

7. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) Discussion of Executive Director's Compensation for Fiscal Year 2003/2004.

(2) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING AND ANTICIPATED LITIGATION MATTERS (Discussion Items)

a. Discuss existing litigation matter pursuant to Section (a) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (1 case):

- F. Alioto Company, Inc. et al. v. City & County of San Francisco, et al., Superior Court Petition CPF 03-503016.

b. Discuss significant exposure to litigation pursuant to subdivision (b) of California Government Code Section 54956.9 (1 case) (As Defendant and As Plaintiff)

(3) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.
This session is closed to any non-City/Port representative. *

a. Property: Piers 27-31
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*Piers 27-31 LLC: Steve Jacobsen

Under Negotiation: _____ Price ____ Terms of Payment _X_ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Piers 27-31.

b. Property: Piers 26
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*International Museum of Women: Elizabeth Colton

Under Negotiation: _____ Price ____ Terms of Payment _X_ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Piers 26.

c. Property: Piers 19/23
Person Negotiating: Port: Peter Dailey, Director of Maritime
*Big C Traders: Raymond Lynch

Under Negotiation: ___ Price ___ Terms of Payment _X_ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Piers 19/23.

d. Property: Seawall Lot 349
Person Negotiating: Port: Ken Winters, Director of Real Estate
*PUC: Ed Smeloff

Under Negotiation: _____ Price ____ Terms of Payment _X_ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Seawall Lot 349.

e. Property: Pier 33 South
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Kira Makagon: Kira Makagon

Under Negotiation: _____ Price ____ Terms of Payment _X_ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 33 South.

f. Property: Heron's Head Park @ Pier 98
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Literacy for Environmental Justice: Dana Lanza

Under Negotiation: _____ Price ____ Terms of Payment _X_ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 98.

8. RECONVENE IN OPEN SESSION

A. Possible report on actions taken in closed session pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12

B. Vote in open session on whether to disclose any or executive session discussions pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

9. ADJOURNMENT

JUNE/JULY 2003
CALENDAR OF UPCOMING PORT MEETINGS - OPEN TO THE PUBLIC

Date	Time	Group	Location
June 12 *Special Meeting*	**3:00 p.m.**	**Port Commission**	**Bayside Conference Room @ Pier 1**
June 24	**3:00 p.m.**	**Port Commission**	**Commission Room @ Ferry Building**
July 8	**3:00 p.m.**	**Port Commission**	**Commission Room @ Ferry Building**
July 22	**3:00 p.m.**	**Port Commission**	**Commission Room @ Ferry Building**

NOTES:

The San Francisco Port Commission meets regularly on the 2nd and 4th Tuesday of the month at 4:00 p.m., unless otherwise noticed, in the Bayside Conference Room @ Pier 1. Contact Amy Quesada at 274-0406. ***The Commission Agenda and staff reports are also posted on the Port's Website @ www.sfport.com.***

The Environmental Quality Advisory Committee (EQAC) meets regularly on the fourth Thursday of the month at 9:00 a.m. at Scoma's Restaurant, Pier 47 @ Fisherman's Wharf. Contact Jay Ach @ 274-0562.

The Fisherman's Wharf Waterfront Advisory Group meets regularly on the 3rd Tuesday of the month. The regular meeting time and place is 9:00 a.m. at Scoma's Restaurant, Pier 47 at Fisherman's Wharf. Contact Kirk Bennett @ 274-0545.

The Maritime Commerce Advisory Committee (MCAC) meets on a bi-monthly basis, on the third Thursday of the month, from 11:30 a.m. to 1:30 p.m. @ Pier 1. ***The May meeting of the MCAC has been changed to June 19.*** Contact Jill Rodby @ 274-0519.

The Mission Bay CAC meets regularly on the 2nd Thursday of the month, from 5:30 to 7:30 p.m. at the Mission Bay Visitor Center (255 Channel Street). Please contact Tiffany Bohee at 749-2481 for more information.

The Northeast Waterfront Advisory Group meets regularly on the 1st Wednesday of the month at 4:00 p.m. in the Bayside Conference Room @ Pier 1. Contact Kirk Bennett @ 274-0545.

The Pier 70 Advisory Group meets monthly on an as-needed basis generally on the 2nd Wednesday of the month from 4 to 6 p.m. at the Potrero Campus of the California College of Arts and Crafts, Board Room, 1111 – 8th Street between Irvin and Hooper. Contact Mark Paez @ 705-8674.

The Rincon Point-South Beach CAC meets regularly on the 3rd Monday of the month, from 5:00-7:00 p.m. at the South Beach Yacht Club (Pier 40 on The Embarcadero). Please contact Tiffany Bohee at 749-2481 or 749-2400 for more information.

The Southern Waterfront Advisory Committee (SWAC) meets every 1st Wednesday of the month from 6:15 to 8:15 p.m. Location to be determined. Contact David Beaupre @ 274-0539 or david_beaupre@sfport.com.

The Waterfront Design Advisory Committee meets the 3rd Tuesday of the month from 11 a.m. to 1 p.m. in the Bayside Conference Room @ Pier 1. Contact Dan Hodapp @ 274-0625.

Port Website: Check out the Port's Website at **www.sfport.com.**

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PORT OF SAN FRANCISCO

MEMORANDUM

June 6, 2003

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Sue Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: Adoption of a policy and program to eliminate discharges of wastewater and ballast water by Cruise Ships into the San Francisco Bay, establishing air quality and water quality advisory groups, and directing the preparation of incentive measures and enforcement mechanisms

DIRECTOR'S RECOMMENDATION: APPROVE A SAN FRANCISCO CRUISE TERMINAL ENVIRONMENTAL POLICY AND PROGRAM.

BACKGROUND

The Port of San Francisco is one of the most diverse maritime business portfolios of any port in the United States. Cruise shipping is one of the Port's leading maritime industries adding significant economic vitality to the City and the entire Bay Area. This industry directly benefits our maritime industries such as tugboats, pilots, longshoremen, stevedore companies, ship suppliers and ship repair. For example, San Francisco Drydock Inc., which employs hundreds of workers representing ten different trade unions, generates a significant portion of their total work from cruise ship repairs and maintenance. The industry also is beneficial to San Francisco's leading industry, tourism, which is in the midst of an unprecedented malaise. Spending by cruise ship passengers helps airlines, hotels, taxis, restaurants and shops. A Port Economic Impact Study showed that over $35 million in annual economic benefits are derived from the cruise industry.

The Port of San Francisco's current cruise terminal at Pier 35 was constructed in 1914 and is nearing the end of its useful life as a functional cruise terminal. During the last several years, Port staff has planned to develop a new international cruise terminal at Pier 30-32, which will be named after labor leader, James R. Herman. This project, approved by the Port Commission on March 25, 2003, is subject to Board of Supervisors approval in the next few weeks. Other project-related discretionary approvals are required to be made by the Bay Conservation and Development Commission, State Lands Commission and the Planning Commission. It is anticipated that

This Print Covers Calendar Item No. **4A**

construction of the new cruise terminal may begin by mid-2005 and completed approximately three years thereafter. During this interim period in which there is and may be increased demand for cruise calls at an inadequate facility, Pier 35 will continue to operate as the primary cruise terminal facility in San Francisco.

As part of the proposed James R. Herman Cruise Terminal and mixed-use project, the Major Environmental Analysis Division of the San Francisco Planning Department completed an environmental review under the California Environmental Quality Act (CEQA). The Supplemental Environmental Impact Report (SEIR) was published in November 2001 and was certified by the Planning Commission in May 2002. Bluewater Network filed an appeal to the Board of Supervisors, and the Board remanded the SEIR to the Planning Commission. City and Port staff and the cruise terminal developer worked with Bluewater Network to revise the document culminating in a letter from Bluewater Network supporting the revisions (Attachment A). The SEIR was revised and certified by the Planning Commission in November 2002. San Franciscans for a Healthy Waterfront filed another appeal, and the Board rejected that appeal thereby certifying the SEIR in January 2003.

On March 25, 2003, the Port Commission adopted the CEQA findings, including implementation of a Mitigation Monitoring and Reporting Program. The CEQA findings discuss the significant environmental impacts of the Cruise Terminal Project that, with mitigation, will be reduced to a level of insignificance and identifies unavoidable significant environmental impacts. The findings included a Statement of Overriding Considerations that specific economic, legal, social and other benefits outweigh the identified significant effects on the environment.

Specifically, the CEQA findings include mitigation measures design to address cruise terminal environmental impacts. These include the following measures designed to address water and air quality impacts:

Water Quality

Wastewater

- Prohibit cruise ships using Pier 30-32 cruise terminal from releasing incidental or intentional discharges to San Francisco Bay until such time as new wastewater treatment methods that adequately meet water quality standards are authorized by state or federal agencies specifically empowered by statute to make such an authorization.

  Initiate and maintaining a program that would include at a minimum: compliance with existing or future laws and regulations; working with government agencies to ensure compliance with the program, implementing a reporting mechanism between cruise ship line and cruise terminal operator that would include monitoring and, where necessary, sampling; reporting by the cruise terminal operator to the U.S. Coast Guard and the San Francisco Bay Regional Water Quality Board (RWQCB) all incidental or intentional discharges into the Bay.

- Establish a water quality advisory group, which would include representatives of the cruise lines, Coast Guard, RWQCB, the Port, the cruise terminal developer, the cruise terminal operator, San Francisco Bar Pilots, at least one environmental organization whose primary stated purpose is to address San Francisco Bay water quality issues, and the Rincon Point-South Beach Citizens Advisory Committee to address cruise ship discharges. This advisory group would make recommendations to the Port Commission for implementation and/or enforcement of measures to prohibit discharges into the Bay.

Ballast Water

- Prohibit cruise ships using the proposed ship terminal from releasing unauthorized ballast water discharges into San Francisco Bay until such time as ballast water treatment is specifically authorized by a state or federal agency specifically empowered by statute to make such an authorization.

- Initiate and maintain a program that would include, at a minimum: review by the Port and cruise terminal developer of cruise lines' processes with relation to ballast water management; implementation of a reporting program between the cruise ship line and the cruise terminal operator that would include monitoring; reporting by the cruise terminal operator to the Coast Guard and the California State Lands Commission staff of all incidental or intentional discharges.

- Establish a mechanism and contract provision whereby the Port retains the right to deny berth access for violations of the prohibition or repeated/habitual offenders of the State ballast water law.

- Establish a water quality advisory group, including a representative from State Lands Commission staff, which would also review and make recommendations on the components of the ballast water program to the Port Commission and would review, evaluate, and make recommendations regarding new technologies for treating ballast water when such technologies are approved by the appropriate agencies.

<u>Air Quality</u>

- Establish an emissions reduction program that identifies specific air emissions for cruise ships and includes incentives and other means that will reduce the air quality impacts of cruise ships using the Pier 30-32 terminal.

- Establish an air quality advisory group to the Port Commission with the purpose of establishing specific emissions reduction criteria and corresponding incentives to reward cruise lines that meet or exceed the emissions reduction criteria. This group would include representatives from

the cruise ship industry, Bay Area Air Quality Management District, the Port, the cruise terminal developer, San Francisco Bar Pilots, the cruise terminal operator, the Rincon Point-South Beach Citizen's Advisory Committee, a local public health organization, and at least one environmental organization whose primary stated purpose is to address pertaining to air quality in the Bay Area. This advisory group would make recommendations to the Port Commission to establish incentives that reduce air pollution emissions. The advisory group will also review and make recommendations regarding measures to address air quality impacts. Following consultation with the advisory group, the Port will adopt an incentive program involving reduced fees for ships meeting or exceeding emissions reduction criteria prior to the commencement of cruise ship operations at Pier 30-32.

These adopted SEIR measures are intended to mitigate water and air impacts at the new cruise terminal. They do not cover the existing cruise terminal operations at Pier 35.

PROPOSAL

It is in the Port's interest to both promote maritime commerce and to protect San Francisco Bay's air and water quality. Because the new cruise terminal may not be operational until 2008, it is reasonable that the Port Commission consider extending environmental measures to existing operations. These include measures that:

- Prohibit cruise ships using San Francisco cruise terminal facilities from releasing incidental or intentional discharges of sewage, gray water, hazardous waste, solid waste, fuel or oil-related substances and unauthorized discharges of ballast water until such time as wastewater and ballast water treatment methods adequately meet authorized water quality standards;

- Require cruise lines to sign berthing agreements that will detail these measures and make compliance with measures a condition of any permission to berth granted by the Port;

- Establish a reporting mechanism and contract provisions whereby the Port retains the right to deny berth access to those cruise ships that violate the Port's program or repeatedly carry out unauthorized wastewater and ballast water discharges;

- Establish a water quality advisory group to the Port Commission within 90 days which would meet on a regular basis to address discharge issues and make recommendations to the Port Commission regarding the implementation and/or enforcement of measures to prohibit discharges into the Bay;

- Establish an air quality advisory group to the Port Commission within 90 days which would meet on a regular basis with the purpose of establishing emissions criteria and corresponding incentives to reward cruise lines that meet or exceed the emissions criteria and which would evaluate and recommend to the Port Commission feasible measures to address air quality impacts, including the potential use of technologies, such as shore-side power, and alternative fuels, such as low sulfur content fuel as well as reduced ship speeds, if proven effective in

reducing nitrogen oxide and PM_{10} emissions;

- Adopt a measure whereby cruise lines found to be out of compliance with any provision of the berthing agreement more than three times in any 24 month period will be restricted or may be prohibited from future berthing rights at the Port of San Francisco.

The Port will provide reasonable levels of staff time and pursue grant funding if necessary to assist the water and air quality advisory groups.

SUMMARY AND RECOMMENDATION

Port staff is supportive of efforts to require cruises ships to employ more stringent environmental practices for San Francisco cruise terminal operations. As a part of staff's plan to develop a new, world-class cruise terminal, the Port Commission has already adopted a set of progressive environmental initiatives aimed at the cruise industry. Staff recommends that appropriate measures developed as part of the Pier 30-32 project be extended to all cruise terminal operations in San Francisco.

The proposed resolution establishes a Port Commission policy to prohibit cruise ships using Port facilities from discharging sewage, gray water, hazardous waste, solid waste, fuel or oil-related substances, or unauthorized ballast water into San Francisco Bay waters until such time as wastewater treatment methods and ballast water treatment methods are specifically authorized by state or federal agencies empowered by statute to make such authorization. The proposed resolution implements these policies by requiring Port staff to prepare a standard form berthing agreement for adoption by the Port Commission that will require cruise lines to comply with all laws regarding discharge. The berthing agreement will also require that cruise lines prohibit any unauthorized ballast water and wastewater discharges while in port until such time as ballast and wastewater treatment methods adequately meet federal or state statutes and require that all cruise ships report to the cruise terminal operator and Port's Maritime Operations Manager all incidental or intentional discharges within San Francisco Bay. Failure to report any discharge with 24 hours may result in denial of future berthing at the Port of San Francisco. These programs will include a financial incentive program to be adopted by the Port Commission that will encourage cruise ships to burn low sulfur fuel while in berth. Within 90 days of adoption of this resolution, the Executive Director is directed to appoint members of the water and air quality advisory groups which creates an on-going dialogue between the maritime industry, regulatory agencies, environmental organizations and community groups to continually evaluate feasible, new technologies and programs, such as shore-based power and low sulfur content fuel, that may be potentially implemented by the Port Commission. By adopting the staff recommendation, this policy and program will be the most ambitious environmental initiative of any cruise terminal operation in California.

Prepared by: Peter Dailey, Maritime Director and
John Doll, Project Manager, Planning & Development Div.

Attachment A:
Bluewater Network Letter to San Francisco Planning Commission, November 15, 2002

PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO

RESOLUTION NO. 03-39

WHEREAS, San Francisco's passenger cruise industry has great economic impact on the local community, generating each year nearly $10 million in wages and benefits, $25 million in purchases of local goods and services, and over $1 million in local and state taxes; and

WHEREAS, Survival of the Bay Area's maritime industry depends heavily upon business generated by cruise ships, including nearly 50,000 man-hours of work each year for hundreds of skilled, union workers from 10 different trades; and

WHEREAS, On March 25, 2003, by Resolution No. 03-28, the San Francisco Port Commission approved transaction documents to allow, subject to Board of Supervisors approval of the lease, the development of a new cruise facility at Piers 30-32; and

WHEREAS, Those documents would require cruise lines using the new facility to follow "Best Management" practices for air and water quality endorsed by leading environmental advocacy groups, and

WHEREAS, Those documents also require creation of local air and water quality advisory groups to oversee operating practices; and creation of a fee incentive program for ships that meet or exceed emissions standards set by the advisory group; and,

WHEREAS, Continued protection of the water quality of the San Francisco Bay is critical for living resources and a key element of maintaining quality of life for residents of the City and County of San Francisco; and

WHEREAS, In 2002, 3028 ocean-going vessels entered San Francisco Bay, and 1.4 percent (or 42) of them were cruise ships calling at the Port of San Francisco; and

WHEREAS, The cruise industry is one of the fastest-growing segments of the travel industry, having served nearly seven million passengers in the year 2000 and operated 123 ships, with a total economic impact in the United States estimated to exceed $15 billion; and

WHEREAS, The businesses and commerce relating to passenger cruise ship calls at San Francisco currently generate over $35 million each year in wages and benefits, business revenues, and state and local taxes, and create hundreds of jobs; and

WHEREAS, The cruise industry provides significant economic benefits to both San Francisco's visitor industry and the City's maritime industries, such as ship repair, harbor services, longshore labor, and ship chandlers; and

WHEREAS, The cruise ship industry is regulated by international, national, and state authorities; and

WHEREAS, International standards for cruise ships are developed by the International Maritime Organization (IMO), including inspection and surveying of cruise ships by classification societies; and

WHEREAS, The primary international environmental standard governing cruise ships is the International Convention for the Prevention of Pollution from Ships, commonly referred to as MARPOL, which addresses operational discharges of oil, disposal of garbage and plastics, and air emissions; and

WHEREAS, International treaties to which the United States is a party have adopted MARPOL as their domestic standard so that compliance with this convention constitutes compliance with national law; and

WHEREAS, The United States has also adopted a series of national environmental laws that are applicable to all cruise ships operating in U.S. waters, including: (1) the Federal Water Pollution Control Act (FWPCA), often referred to as the Clean Water Act (CWA), which prohibits the discharge of oil and hazardous substances into the waters of the U.S.; (2) the Clean Air Act (CAA), which authorizes the Environmental Protection Agency (EPA) to establish air emission standards and impose civil penalties for emissions in excess of those standards; and, (3) the Resource Recovery Act (RRA), which authorizes the EPA to establish regulations relating to the handling and disposal of hazardous waste; and

WHEREAS, In January 2003, the California State Lands Commission hosted a two-day "West Coast Ballast Water Conference" that included representatives from environmental groups, research scientists, ports, the maritime industry, and members of state and federal resource and regulatory agencies from California, Oregon, Washington, and British Columbia; and

WHEREAS, The participants at that conference identified issues pertaining to ballast water and invasive species, potential short-term and long-term solutions that could apply throughout the West Coast, and areas where additional scientific research is needed; and,

WHEREAS, As a result of those deliberations, The Ocean Conservancy, a nationally known environmental group, drafted legislation, introduced into the California legislature as AB 433, to establish a comprehensive and effective science-based ballast water program for all maritime vessels in the State of California; and,

WHEREAS, In the United States, the U.S. Coast Guard has primary jurisdiction over environmental matters in ports and waterways and conducts passenger ship inspections that review environmental systems and practices; and,

WHEREAS, The U.S. Coast Guard is the primary Federal agency having jurisdiction over environmental and safety aspects of maritime vessel operations, including the operations of cruise ships; and,

WHEREAS, The State of California has residual authority to exercise authority in environmental protection; and,

WHEREAS, California has exercised that authority by creating programs addressing ballast water discharges and air emissions by all commercial vessels, including cruise ships; and,

WHEREAS, The United States General Accounting Office (GAO) published a Report to Congressional Requesters in February 2000 entitled "Marine Pollution—Progress

Made to Reduce Marine Pollution by Cruise Ships, But Important Issues Remain," which addressed cruise ship environmental performance for the period of 1993-98; and

WHEREAS, That report concluded that while federal agencies and the cruise industry have taken positive steps to improve environmental performance and compliance, continued progress is needed; and

WHEREAS, Approximately 54 new cruise ships are either under construction or on order, and each new generation of cruise ships incorporates further improvements in shipboard environmental systems; and

WHEREAS, The Port of San Francisco's current cruise term at Pier 35 was constructed in 1914 and is nearing the end of its useful life as a modern cruise terminal; and,

WHEREAS, The Port is in the process of developing a new international cruise terminal at Piers 30-32, to be named after labor leader James R. Herman; and

WHEREAS, The Port currently utilizes Pier 35 for cruise ship operations; and

WHEREAS, The Port recognizes that continued protection of the water quality of the San Francisco Bay is both critical for living resources such as marine mammals, birds, fish, sea turtles, invertebrates and marine algae, and a key element of maintaining quality of life for residents of the City and County of San Francisco; and

WHEREAS, Recognizing that environmental issues related to Bay Area water quality and air quality are regulated most effectively on a regional, statewide and federal level, the Port desires to adopt a program that is legally within its authority and is appropriate on a local level to maintain and improve the Bay environment; now, therefore, be it

RESOLVED, The Port Commission hereby declares that it is the policy of the San Francisco Port Commission to prohibit cruise ships using Port of San Francisco cruise terminal facilities from releasing incidental or intentional discharges of sewage, gray water, hazardous waste, solid waste, or fuel or oil-related substances into San Francisco Bay waters until such time as new wastewater treatment methods that adequately meet water quality standards that are authorized by state or federal agencies empowered by statute to make such authorization; and, be it

RESOLVED, The Port Commission hereby declares that it is the policy of the San Francisco Port Commission to prohibit cruise ships using Port of San Francisco cruise terminal facilities from releasing unauthorized discharges of ballast water into San Francisco Bay waters until such time as ballast water treatment is specifically authorized by state or federal agencies empowered by statute to make such authorization; and, be it further

RESOLVED, That the Port Commission hereby directs the Executive Director or his designee within 90 days of the date hereof, to bring back a comprehensive program implementing the Port policies adopted by this Resolution, which program shall include the following components:

(1) Preparing a standard form berthing agreement for Port Commission approval and adoption which will include the following provisions:

(a) All Cruise Ships shall comply with all applicable laws, including, without limitation, all applicable local, state and federal laws regarding discharge of sewage, gray water, hazardous waste, solid waste, fuel or oil-related substances, ballast water and wastewater into San Francisco Bay;

(b) All Cruise Ships shall be agree to not release incidental or intentional discharges of sewage, gray water, hazardous waste, solid waste, or fuel or oil-related substances into San Francisco Bay waters until such time as shipboard wastewater treatment methods that adequately meet water quality standards are authorized by state or federal agencies empowered by statute to make such authorization;

(c) All Cruise Ships shall agree to not release unauthorized incidental or intentional discharges of ballast water into San Francisco Bay waters until such time as shipboard ballast water treatment is specifically authorized by state or federal agencies empowered by statute to make such authorization;

(d) All Cruise Ships shall report to the cruise terminal operator and the Port Maritime Operations Manager all incidental or intentional discharges within San Francisco Bay and failure to report any discharge within 24 hours may result in denial of future berthing at the Port of San Francisco; and

(e) Cruise Ships found to be out of compliance with any provision of the Port's berthing agreement more than three times in any 24 month period will be restricted or may be prohibited from future berthing rights at the Port of San Francisco; and

(2) Establishing a mechanism with government agencies having jurisdiction over Bay water quality to verify compliance with applicable regulations and contract provisions; and

(3) Periodically considering for adoption recommendations from the Cruise Ship Water Quality Advisory Group created by this Resolution; and be it further

RESOLVED, That the Port does hereby establish a Cruise Ship Water Quality Advisory Group, advisory to the Port Commission, which group will meet on a regular basis to address Cruise Ship discharge issues and make recommendations to the Port Commission regarding the implementation and/or enforcement of measures to prohibit Cruise Ship discharges into the Bay; and, be it further

RESOLVED, That within ninety days of the date hereof, the Executive Director is hereby directed to appoint members to the Cruise Ship Water Quality Advisory Group, which shall include representatives of the cruise lines, Coast Guard, Regional Water Quality Control Board, the Port, San Francisco Cruise Terminal LLC (SFCT), the Port's cruise terminal operator, the State Lands Commission, the San Francisco Bar Pilots, at least one environmental organization whose primary stated purpose is to address San Francisco Bay water quality issues, and the Rincon Point-South Beach Citizens Advisory Committee, and shall report back to the Port Commission on such appointments; and be it further

RESOLVED, That the Port does hereby establish a Cruise Ship Air Quality Advisory Group, advisory to the Port Commission, which group will meet on a regular basis with the purpose of establishing reduction criteria and corresponding incentives for consideration by the Port Commission to reward cruise lines that meet or exceed the emissions criteria, and which would review and recommend to the Port Commission feasible measures to address air quality impacts, including the potential use of technologies, such as shore-based power, and alternative fuels, such as low sulfur content fuel, and reduced ship speeds, if proven effective in reducing nitrogen oxide and PM_{10} emissions; and be it further

RESOLVED, That within ninety days of the date hereof, the Executive Director is hereby directed to appoint members to the Cruise Ship Air Quality Advisory Group, which shall include representatives from the cruise industry, Bay Area Air Quality Management District, the Port, SFCT, the San Francisco Bar Pilots, the Port's cruise terminal operator, the Rincon Point–South Beach Citizen's Advisory Committee, a local area public health organization, and at least one environmental organization whose primary stated purpose is to address issues pertaining to air quality in the Bay Area, and shall report back to the Port Commission on such appointments; and be it further

RESOLVED, Following consultation with the Advisory Group, the Port Commission shall adopt an incentive program which shall involve reduced fees for ships that meet or exceed the emissions reduction criteria and will also include Port recognition and promotion of cruise lines that are committed to environmentally responsible operations, including the deployment of ships using reduced emission system technology or cleaner burning fuel.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of June 12, 2003.

_____
Secretary

November 15, 2002

ATTACHMENT "A"

President Shelly Bradford-Bell
San Francisco Planning Commission
1660 Mission Street
San Francisco, CA

RE: San Francisco Cruise Terminal Mixed-Use Project and
Brannan Street Wharf Project
Project No. 2000.1229E, State Clearinghouse No.: 1994123007
Revisions to the Final Supplemental Environmental Impact Report

Dear President Bradford-Bell and Planning Commissioners,

Bluewater Network is a national environmental group based in San Francisco that works to stop and prevent environmental damage caused by the oil, shipping and motorized recreation industries. We filed a successful appeal of certification of the Environmental Impact Report of the San Francisco Cruise Terminal Mixed-Use Project and Brannan Street Wharf Project. The Board of Supervisors upheld our appeal in a unanimous vote and remanded it to the Planning Department for additions, corrections and stronger mitigation measures.

We filed the appeal based specifically, and only, on our concerns about cruise ship pollution. The significant impacts from the tremendous air emissions that will be generated by cruise ships using the new terminal were not adequately addressed. In addition, measures for preventing discharges of cruise ship blackwater (sewage), graywater from sinks and galleys, etc.; and untreated ballast water were not adequate.

In response to our appeal and subsequent to negotiations between Bluewater Network and the Port of San Francisco, the San Francisco Planning Department and Lend Lease, the revised FSEIR language addresses the concerns in our appeal by:

1. Prohibiting cruise ships using the new terminal from discharging any ballast water into San Francisco Bay, until certified technologies that prevent spread of invasive species carried in the ballast water are installed on cruise ships that use the new terminal.

311 California, Suite 510 ~ San Francisco, CA 94104
T: 415.544.0790

BLUEWATER NETWORK

www.bluewaternetwork.org ~ bluewater@bluewaternetwork.
F: 415.544.0796

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2. Prohibiting cruise ships using the new terminal from discharging any blackwater, graywater, oily bilge water, hazardous waste or any other wastewater into San Francisco Bay.

3. Adopting an air emissions reduction program for cruise ships using the new cruise ship terminal that will include but not be limited to an incentive program for cruise ships.

In order to enforce these measures and to monitor compliance, the revised FSEIR sets up working groups, enforcement measures and monitoring and sampling programs.

We support these steps and the additional clarifications and revised language that have been developed. This will settle our appeal of the cruise terminal EIR.

We would also like to commend the Port of San Francisco, Lend Lease and the Planning Department for seriously delving into the issues we raised and working closely with us to develop measures to reduce cruise ship pollution. It was a constructive and beneficial process, resulting in a much stronger environmental document.

We also realize that there is more work to do and we look forward to further collaboration with the Port of San Francisco, Lend Lease and the City to ensure that these measures are fully developed and implemented. We intend to participate fully in the working groups and to participate in the public process as the project moves forward.

Please feel free to contact me or visit our website if you would like more information about cruise ship pollution.

Sincerely yours,

Teri Shore

Teri Shore
Clean Vessels Campaign Director

Cc: San Francisco Board of Supervisors

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PORT OF SAN FRANCISCO

MEMORANDUM

June 6, 2003

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Sue Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval of Assignment and Amendments to the Lease Disposition and Development Agreement and Ground Lease for the Rincon Park Restaurants Project, located on The Embarcadero between Howard and Folsom Streets.

DIRECTOR'S RECOMMENDATION: (1) APPROVE PROPOSED ASSIGNMENT OF THE RINCON PARK RESTAURANTS PROJECT TO JMA WATERFRONT PROPERTIES, LLC; AND (2) APPROVE PROPOSED AMENDMENTS TO DEVELOPMENT AGREEMENT AND LEASE.

I. Introduction

The Port owns waterfront property along The Embarcadero between Harrison and Howard streets. Over twenty years ago, the San Francisco Board of Supervisors adopted the Rincon Point-South Beach Redevelopment Plan designating the development of a public park in the vicinity of the Port waterfront property. In addition, the Redevelopment Plan earmarked a portion of the designated property for the development of restaurant uses.

As a result of the Redevelopment Plan, the Port leased most of the designated property to the San Francisco Redevelopment Agency ("Redevelopment Agency") in September 2001 for the development and operation of a public park ("Rincon Park"). The lease is for 65 years and stipulates an annual rent of one dollar. After a competitive bidding process and exclusive negotiations period, the Port entered into a Development Agreement ("DA") and Ground Lease ("Lease") in October 2001 with Rincon Park Restaurants, LLC ("RPR") for the development and operation of two restaurants and a central "piazza" with outdoor dining space on a 20,000 square foot parcel adjacent to Rincon Park as shown on Exhibit A (the "Project"). The Project furthers the objectives set forth in the Redevelopment Plan and the Waterfront Plan adopted by the Port after an extensive public planning process.

This Print Covers Calendar Item No. **5A**

ORT OF SAN FRANCISCO
TEL 415 274 0400 CITY 415 274 0537 ADDRESS Pier 1
FAX 415 274 0528 WEB www.sfport.com P.O. Box 24448

RPR was unable to perform on its obligations under the DA and, after various uncured defaults by RPR, the Port exercised its "assignment remedy" requiring RPR to assign its interest in the DA and Lease to another party acceptable to the Port. The Port had negotiated this remedy with RPR as a part of the DA to ensure that, in the event of default by RPR, the Port had immediately available an efficient mechanism to find a financially viable developer capable of completing the Project within or close-to the originally expected timeframe, and maintain Project continuity with respect to the overall Site design for the park and restaurant site and related design approvals and entitlements.

Through the assignment remedy process, JMA Properties, Inc. was introduced to the Port as a candidate assignee in June 2002. After numerous discussions and negotiations with JMA Properties, Port staff has concluded that JMA is qualified and capable of completing the Project. However, based upon its experience with RPR and further financial analysis of the Project, staff has also concluded that a fundamental shift in the development approach, along with corresponding amendments to the DA and Lease, is necessary to make the Project economically viable. As explained further below, the necessary shift is from RPR's approach as a developer/restaurant operator, to JMA's approach, as a developer that will develop the Project and, in turn, sublease space to restaurant operators.

Staff recommends that the Port Commission approve the proposed assignment to JMA Properties as well as the proposed amendments to the DA and Lease reflective of the shift in development approach.

II. Background

Over 20 years ago (in January 1981), the San Francisco Board of Supervisors and the Redevelopment Agency adopted the Rincon Point-South Beach *Redevelopment Plan*, which designated a future park along The Embarcadero roughly between Harrison and Howard Streets ["Rincon Park" or "Park"], and earmarked 12,000 square feet of the Park north of Folsom Street for restaurant uses. The *Redevelopment Plan's* Design for Development outlines the design objectives and development standards and guidelines to be applied to the restaurant site, and describes it as "a 'Tavern on the Green' type restaurant(s) and plaza".

In January 1995, the Redevelopment Agency, with support from the Port, issued a variance (Resolution 7-95) to the *Redevelopment Plan* which, among other things, relocated the restaurant site within the Park from north of Folsom to south of Folsom and expanded the restaurant site from 12,000 square feet to 20,000 square feet (although the ground floor building area was limited to 12,000 square feet). The variance allowed for the use of the additional 8,000 square feet of restaurant site area for outdoor terrace dining.

After a 6-year public planning process, the Port, in 1997, adopted the *Waterfront Land Use Plan*, which includes long-range plans for the "Ferry Building Subarea" extending south of the Ferry Building to Harrison Street. The policies in this plan mirrored those of the Redevelopment Plan establishing the 20,000 square foot Project Site between Folsom and Harrison Streets because the restaurant and outdoor dining uses would activate the park and adjacent waterfront promenade and would also generate revenue to support other objectives of the Waterfront Plan. In 1998, the

City and County of San Francisco adopted conforming amendments to the San Francisco General Plan.

In July 1998, Clifford Associates prepared an appraisal of the Project Site for the Port that determined the fair market rental value of the Project Site for restaurant uses to be at least $195,000 per year minimum rent and $270,000 total rent including participation. On July 23, 1998, the Port issued a Request for Proposal ("RFP") for the Restaurant Development Opportunity at Rincon Park, specifying a minimum rent of $200,000 per year pursuant to the Clifford Associates appraisal.

The Port received two bids in response to this RFP for development and operation of the Project. The Port Commission awarded to Nice Ventures Inc. the opportunity to enter into an exclusive right to negotiate with the Port for the Project and on March 9, 1999, approved an Exclusive Right to Negotiate agreement.

During the Exclusive Negotiation Period, Nice Ventures refined the design and scope of the Project in concert with the design development for Rincon Park. Nice Ventures and Port staff worked closely with the Redevelopment Agency and the Rincon Park design team to develop an integrated park and restaurant design concept whereby the restaurants would be best positioned to activate and provide passive security to the park, and be most complementary to the overall park design scheme. The design process, over the course of approximately 2 years, involved the active participation of the Rincon Point-South Beach Citizen Advisory Committee, BCDC and BCDC's Design Review Board and the Waterfront Design Advisory Committee. Ultimately, Rincon Park was designed to "surround" the Project Site, a concept that was embraced by the Port, the Redevelopment Agency and BCDC and that consensus influenced the Schematic Design of Rincon Park that was approved jointly by the Port and RDA on February 29, 2000. Having established the Rincon Park design, the Port and Nice Ventures continued the schematic design and public review process for the restaurants Project, including:

- On April 26, 2000 the Waterfront Design Advisory Committee (WDAC) provided comments and recommendations on the schematic design of the Project .

- On May 15, 2000 the Rincon Point-South Beach CAC, after a series of design presentations on the project, voted to endorse the schematic design of the Project.

- The San Francisco Bay Conservation and Development Commission (BCDC) Design Review Board (DRB) held public hearings on the overall Park design (including the restaurants Project) on November 8, 1999, January 10, 2000, May 8, 2000 (focused primarily on the restaurants Project) and July 10, 2000.

- During the Exclusive Negotiation Period, Rincon Park Restaurants, LLC ("RPR"), a California limited liability company, was formed, with Nice Ventures, Inc. as managing member, to pursue the restaurant Project.

- On July 25, 2000, the Port Commission approved the LLDA and Lease with RPR and Schematic Drawings for the Project, including related modifications to the Design & Access Element of the Waterfront Plan. It should be noted that the Schematic Drawings were found to be responsive to a number of conflicting design recommendations, and reflect removal of a

proposed canopy between the two restaurant buildings and removal of a portion of the second story of the south restaurant building requested during the design review process.

- On October 10, 2000, the Board of Supervisors approved the form and substance of the Lease. Between October 2000 and October 2001, RPR attempted to obtain equity and traditional lender financing for the project. At RPR's request, the Port met with its financial brokers and discussed potential amendments to the DA and Lease that could improve RPR's ability to finance the Project.

- On October 19, 2001, RPR and the Port executed an amended DA (with the form Lease approved by the Board of Supervisors attached), including a modified Schedule of Performance that stipulated milestone dates for the resumption and finalization of the project design, application for BCDC permit and submittal of a financing plan for the Project.

RPR continued its efforts to obtain equity and lender financing, but ultimately determined that financing could not be obtained for the project given RPR's proposed approach to the Project and the financial structure of the Lease. RPR sought to deliver the Project by combining the development of the site and shell improvements with the development of the restaurants. This combined approach was implemented by a single entity, RPR, and the financial deal was structured like that of lease typical for a single freestanding restaurant. Combining these two roles with a single entity appears to have contributed to RPR's failure to proceed with the Project.

The Port extended performance milestone dates in order to allow RPR some additional time to restructure the development entity or create a joint venture with an experienced developer. Despite the time allowances and RPR's efforts, between January 2002 and April 2002, RPR failed to meet various performance benchmarks stipulated in the Schedule of Performance as well as other obligations in the DA, such as payment of DA fees. A failure to meet the performance benchmarks was an event of default by RPR, allowing the Port to exercise its default remedies stated in the DA.

On April 26, 2002, the Port notified RPR of its election to exercise the "Assignment Remedy" (as defined in the DA) with respect to certain events of default. The Assignment Remedy requires RPR to assign all of its rights, title and interest in the transaction to another developer acceptable to the Port in its sole and absolute discretion (the "Assignee").

Shortly thereafter, JMA Properties, Inc. ("JMA") was introduced to the Port as a candidate Assignee. Since June 2002, JMA has provided the Port with information sufficient to evaluate its proposal for assignment of the DA and Lease to JMA. This report summarizes JMA's qualifications and the negotiated amendments to the DA and Lease proposed in conjunction with this assignment.

III. Proposed Assignment

JMA has formed a real estate entity, "JMA Waterfront Properties, LLC", a limited liability company in which JMA is the managing partner, and that will assume the obligations and rights in the DA and Lease ("JMA Waterfront").

Development Team. JMA's development team is a combination of experienced in-house development staff and qualified design consultants. The President of JMA, Art Chapman and its Managing Director, Peter Clark, will be the principal investors and guarantors of the real estate project construction, and will actively manage the development and implementation of the Project. Art Chapman, in particular, will work directly with the San Francisco Bay Conservation and Development Commission ("BCDC"), the Rincon Point-South Beach CAC ("CAC") and other interested parties, as needed, to obtain a BCDC permit for the project. Damon Chan, Vice President of Development at JMA, will serve as Project Manager.

Some of the recent projects undertaken by JMA and this particular development team are summarized in Exhibit B, including:

- $18M historic rehabilitation project at 123 Townsend Street;
- $17M renovation and re-lease at 360 Spear Street;
- Ground- up construction of The Village Pub restaurant in Woodside, CA.

Each of these projects included community involvement, an entitlement process and significant financial capacity. The Village Pub restaurant project was successfully developed using the same development approach that is proposed for the Project Site, and the resulting operation has received excellent reviews by industry critics.

Overall, the development team has the capability to complete the Project effectively and has demonstrated an ability to work constructively with the Port.

Design: JMA Waterfront proposes to maintain the approved design for the site layout and buildings, consistent with Schematic Design drawings previously reviewed by the Waterfront Design Advisory Committee and BCDC Design Review Board in 1999/2000; endorsed by the Rincon Point-South Beach CAC in May 2000; and approved by the Port Commission in July 2000. Since Rincon Park has been constructed to reflect the integration of the restaurant Site within the Park as specified in the approved Schematic Design drawings, this approach is critical to the successful implementation of the Project and to complete the Park as planned. To this end, JMA intends to contract with the original design architects, Pfau Architecture and Jim Jennings Architects, to prepare final design and construction documents for the Site. The experience and qualifications of the project architects are well known to the Port through their work on the approved Schematic Design for the restaurant Site. Working closely with the Rincon Park design team, the architects developed a design for the restaurants Site that responded to public, community, BCDC and WDAC comments, and is well integrated with the Park design. The Port has introduced the JMA development team to the Redevelopment Agency staff and CAC and JMA expects to continue the dialogue with the community during the final design and operational phases of the project.

Financial Capacity. Based upon the Port's review of financial information for JMA and its principal owners, JMA has demonstrated its ability to fund preliminary design and predevelopment costs and to raise the equity and financing capital necessary to fund the development costs. Two lending institutions have expressed an interest in working with JMA to finance the Project.

Financial Viability. JMA has demonstrated that the Project is viable based on projected restaurant revenues that are consistent with comparable restaurants in the City and a reasonable cash flow analysis which accounts for the proposed capital investment for the improvements.

Signature Authorization Ordinance. JMA Waterfront has agreed to comply with the requirements of the City's Employee Signature Authorization Ordinance and, once formed, the Restaurant Entities would enter into agreements with Local 2 for the operation of the restaurants in accordance with the provisions of the City Ordinance. (As the prospective restaurant operator of the planned restaurants, RPR had entered into an agreement with Local 2 that will no longer be applicable since RPR is no longer a prospective restaurant operator for the Project.)

Development Agreement Fees. JMA Waterfront will pay the Port a non-refundable fee of $50,000 for unpaid fees under the DA upon approval of the BCDC permit for the Project, and resume payment of DA fees of $5,000 per month upon execution of the DA..

IV. Proposed Amendments

Development Approach: JMA proposes to restructure the transaction to separate the development (including design, financing, and construction) and operation of Project's site and building shell from the development and operation of the restaurants within the Project. In this typical developer/sub-tenant arrangement, JMA will fund the site improvements and the shell construction of the restaurant buildings, and will enter into subleases with two separate Restaurant Entities that will separately develop the sub-tenant improvements for each restaurant and operate each restaurant business. Pursuant to the LLDA and Lease between the Port and JMA Waterfront, JMA Waterfront will be responsible for developing, operating and subleasing the Project, as well as providing the Port with an income stream from the Project. Under subleases with the Restaurant Entities, JMA Waterfront will retain authority to further ensure that performance obligations under the DA and Lease are satisfied.

Financial Terms: JMA and Port staff have negotiated amendments to certain financial terms of the Lease because the existing parameters reflect a financial structure typical for operating restaurants, which does not work well for a development project. In the existing structure, the restaurant developer/operator does not receive a development return, but only achieves a return through the operation of the completed restaurants. The revised structure provides the developer with the opportunity to earn a development profit on the Project based upon the rental revenues that it receives from subleases with Restaurant Entities.

A table attached as Exhibit C summarizes the revised financial terms that have been negotiated by staff as compared to the key financial terms in the existing Lease. The proposed amendments reflect financial terms consistent with other Port development projects.

V. Analysis of Amended Financial Terms

Under both the existing Lease and the proposed amendments, the Port will receive a similar guaranteed income stream in the form of minimum rent, although the form and amount of further Port participation differ. The potential amount of the Port's participation is reduced in the revised structure, but so are the Port's risks – both initially and throughout the Lease term. The risk of the Project not being developed was greatly heightened by having the restaurant operator

responsible for obtaining financing for the restaurants as well as the site and shell improvements, as evidenced by the RPR's inability to obtain such joint financing. This initial development risk is reduced substantially by adding a developer who obtains financing and develops the site and building shell separate from the individual restaurants. Moreover, having the Restaurant Entity being responsible for paying rent directly to the Port tightly linked the Port's income stream to the financial success of the restaurant operations, again heightening the Port's on-going financial risk. Having a separate developer who has an investment in the Project and pays rent to the Port insulates the Port's income stream from financial problems of the restaurant operations.

Minimum Rent. The proposed amendments, like the existing Lease, provide a guaranteed income stream in the form of minimum rent. In both structures, the initial annual minimum rent is $200,000 per year, which exceeds the market minimum rental value of $195,000 indicated in the Clifford Associates appraisal. Both structures provide initially for cost of living increases in the minimum rent, and both structures also provide for future adjustments of the minimum rent to the then fair market value.

Rent Credits. The fair market rental values indicated in the Clifford Associates appraisal reflected ground rents assuming that the Site constituted a building pad upon which no additional work is required before construction could start on the Project, which is not actually the case. Substantial improvements are in fact required to the Site to prepare it as a building pad ready for construction. These required building pad costs include geotechnical and structural studies, soil remediation, grading, stubbing of underground utilities, and installation of piles or other extraordinary substructure improvements. Rather than the Port undertaking this work, the Port will provide the Tenant with rent credits for these costs in both the existing lease and the proposed amendments, in an amount not to exceed $759,000 which is the estimated cost of this building pad work.

Participation. Under both the existing Lease and the proposed amendments, the Port will receive percentage rent based upon the receipts of the Port's tenant. Under the existing Lease, this percentage rent of 3% is based upon the gross receipts of the Restaurant Entity (who is the Port's tenant), while under the amendments, the Port will receive percentage rent of 10-15% based upon the gross rental revenues that the developer receives from its sublease Restaurant Entities. Under the existing Lease, the minimum rent paid is deducted from the percentage rent due. Under the proposed amendments, percentage rent is calculated after deducting an artificial break-point from JMA Waterfront's gross rental receipts, with the artificial break-point reflecting the anticipated minimum rent that JMA Waterfront will receive from its subtenants. In effect, the Port will participate in the percentage rent that JMA Waterfront receives from its subtenants. In addition, as is typical of development projects, the proposed amendments provide Port participation in the net sales proceeds from all sales of the leasehold, while the Port would not so participate under the existing Lease.

Rental Projections. The following table compares the projected average Port minimum and percentage rentals from the Project (before rent credits) during the initial 8 years of the lease term pursuant to the existing lease structure, as compared to the proposed amendments. (The projected Port rentals under the proposed amendments also project the potential Port participation in net sales proceeds assuming a sale of the leasehold in year 8.)

Average Annual Port Rentals: Years 1-8

Initial Gross Annual Restaurant Sales	Existing Terms	Amended Terms Excluding Net Sales Revenues	Amended Terms Including Net Sales Revenues
@ $11.0 Million	$360,365	$218,204	$218,204
@ $13.5 Million	$442,266	$235,949	$239,557
@ $16.0 Million	$524,167	$253,695	$370,067

While the proposed amendments would generate less potential Port revenues, it is noteworthy that the projected average annual Port rents that would be generated by the proposed terms are more in-line with the fair market rental values of $195,000 for base rentals and $270,000 for total rentals that is indicated in the Clifford Associates appraisal. It is also noteworthy that the Port is currently receiving no revenues from the Site, and would continue to receive no revenues if the Project is not developed. Under the proposed amendments, it is likely that the Project will in fact be developed, generating fair market rentals to the Port from a non-income producing property. Moreover, under the revised structure, the risk of the on-going Port income stream from the completed Project being disrupted is greatly decreased.

VI. Next Steps

Following approval of the assignment and amendments to the DA and Lease by the Port Commission, the following additional approvals must be obtained before construction can proceed:

- Approval of the amended Lease by the San Francisco Board of Supervisors.
- Issuance of a BCDC permit.
- Port review and approval of final design and construction drawings, including further review and comment by Port Commission as desired.
- Issuance of a building permit by the Port.
- JMA Waterfront will meet various performance benchmarks set forth in a new Schedule of Performance to be attached to the DA, with default mechanisms associated with failure to perform. Key dates include:

BCDC Permit Application	October 11, 2003
Preliminary Construction Documents	November 22, 2003
Close of Escrow/Commence Construction	June 1, 2004
Complete Construction	April 30, 2005

VII. RECOMMENDATION

As explained earlier, the Project is the result of over twenty years of planning and public participation efforts. Importantly, development of the Project will enable the Port to achieve its many planning objectives, including:

- Activating the new Rincon Park;
- Promoting public enjoyment and access to the waterfront by creating an attractive destination; and
- Generating activity in this portion of the waterfront throughout the evenings and weekends to complement the weekday office users from the financial district.

Completion of the Project will also achieve the Port's objective of generating fair market rentals from this non-income generating property. As an enterprise department, the Port must have an adequate income stream to fulfill its public trust mission.

JMA offers the opportunity to bring to fruition these extensive efforts and objectives. JMA has demonstrated experience and financial capacity to make this Project a reality using a developer approach. In this developer approach, the development and operation of the site and shell improvements would be separated from the development and operation of individual restaurants. Port staff believes that such a developer approach significantly increases the likelihood that the Project will be successfully developed, enhances the long-term success of the Project, and reduces the Port's risk that its income stream from the Project is disrupted. The recommended amendments to the DA and Lease will enable this developer approach to be implemented.

As such, staff recommends that the Port Commission (1) approve the proposed assignment of the Rincon Park Restaurants Project to JMA Waterfront as documented in the Consent Agreement on file with the Commission Secretary and (2) approve the proposed amendments to the DA and Lease as described in this Staff Memorandum and as more fully documented in the First Amendment to the DA and amended Lease on file with the Commission Secretary.

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 03-40

WHEREAS, Charter Section B3.581grants the Port Commission the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, Under Charter Section B3.581(g), leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, The Port owns certain properties located easterly of The Embarcadero Roadway between Harrison Street and Howard Street, generally referred to as Rincon Park; and

WHEREAS, On October 19, 2001, the Port entered into a Development Agreement ("DA") with Rincon Park Restaurants, LLC ("RPR") for construction and operation of two restaurants (the "Project") on an approximately 20,000 SF parcel within Rincon Park (the "Restaurant Site"); and

WHEREAS, Between October 2001 and April 2002, the Port notified RPR of various events of default under the DA triggered by RPR's failure to meet performance benchmarks stipulated in the Schedule of Performance which is incorporated into the DA and other obligations in the DA, such as payment of DA fees; and

WHEREAS, On April 26, 2002, pursuant to its rights in the DA, the Port notified RPR of its election to exercise the "Assignment Remedy" with respect to certain of the events of default; and

WHEREAS, The Assignment Remedy requires RPR to assign all of its right, title and interest in the DA and Lease to another developer acceptable to the Port in its sole and absolute discretion; and

WHEREAS, The Port had negotiated the Assignment Remedy with RPR as a part of the DA to ensure that, in the event of a default by RPR, the Port had immediately available an efficient mechanism to find a financially viable developer capable of completing the Project within or close-to the originally expected timeframe, and maintain Project continuity with respect to the overall Site design of the Restaurant Site and related design, regulatory approvals and entitlements; and

WHEREAS, Through the Assignment Remedy process, JMA Waterfront Properties, LLC ("JMA Waterfront") was introduced to the Port as a candidate assignee; and

WHEREAS, Port staff has evaluated JMA Waterfront's proposal for development of the Project on the Restaurant Site and its ability to perform the obligations set forth in the DA and Lease; and

WHEREAS, Port staff has concluded, after numerous discussions and negotiations with JMA, that JMA Waterfront is qualified and capable of completing the Project; and

WHEREAS, Based upon its experience with RPR and further financial analysis of the Project, Port staff has also concluded that a fundamental shift in the Port's development approach, along with corresponding amendments to the DA and Lease, is necessary to make the Project economically viable; and

WHEREAS, Based on the foregoing, Port staff recommends that the Port Commission approve the proposed assignment of RPR's rights, title and interest in the DA and Lease to JMA Waterfront, as documented in the form of the Consent Agreement on file with the Commission Secretary; and

WHEREAS, Port staff further recommends that, in conjunction with the approval of the assignment, the Port Commission approve the proposed First Amendment to DA and amended Lease as described in the Staff Memorandum for this agenda item and as more fully documented in the copies of such documents on file with the Commission Secretary; NOW, THEREFORE, BE IT

RESOLVED, Based on its own review and staff's recommendation, the Port Commission finds that JMA Waterfront is qualified and capable of completing the Project; and be it further

RESOLVED, That the Port Commission finds that completion of the Project in a timely manner fulfills many Port planning and financial objectives; and be it further

RESOLVED, On July 25,2000, the Port Commission adopted Resolution 00-61, in which it reviewed and considered the Rincon Point-South Beach Redevelopment Plan Final Environmental Impact Report 80.267, the Rincon Point-South Beach Redevelopment Plan Supplemental Environmental Impact Report 90-088E, and the Waterfront Land Use Plan Final Environmental Impact Report (collectively, the "Prior EIRs") and adopted certain findings in connection with the approval of the DA and Lease with RPR, which findings are on file with the Commission

Secretary and which findings are incorporated herein by this reference as though fully set forth in this resolution; and be it further

RESOLVED, That based upon the Port Commission's review of the Prior EIRs, the Port Commission finds that: (1) modifications incorporated into the Project as a result of the transactions approved by this resolution will not require important revisions to the Prior EIRs due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) no substantial changes have occurred with respect to the circumstances under which the Project is undertaken which would require major revisions to the Prior EIRs due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the Prior EIRs; and (3) no new information of substantial importance to the Project has become available which would indicate: (a) the Project will have significant effects not discussed in the Prior EIRs; (b) significant environmental effects will be substantially more severe; (c) mitigation measures or alternatives found not feasible which would reduce one or more significant effects have become feasible; or (d) mitigation measures or alternatives which are considerably different from those in the Prior EIRs would substantially reduce one ore more significant effects on the environment; and be it further

RESOLVED, That the Port Commission approves the assignment of RPR's right, title, and interest in the DA and Lease to JMA Waterfront as reflected in the Consent Agreement on file with the Commission Secretary; and be it further

RESOLVED, That the Commission approves the First Amendment to DA and the amended Lease as described in the Staff Memorandum for this agenda item and as more fully documented in the copies of the such documents on file with the Commission Secretary; and be it further

RESOLVED, That the Port Commission authorizes and directs the Executive Director to forward the amended Lease to the Board of Supervisors for approval, pursuant to its authority under Charter Section 9.118(c), and upon the effectiveness of such approval, to execute the Consent Agreement and First Amendment to DA, and subject to the terms of the amended DA, to execute the amended Lease, in substantially the form of such agreements on file with the Commission Secretary, and in such final form as is approved by the Executive Director in consultation with the City Attorney; and be it further

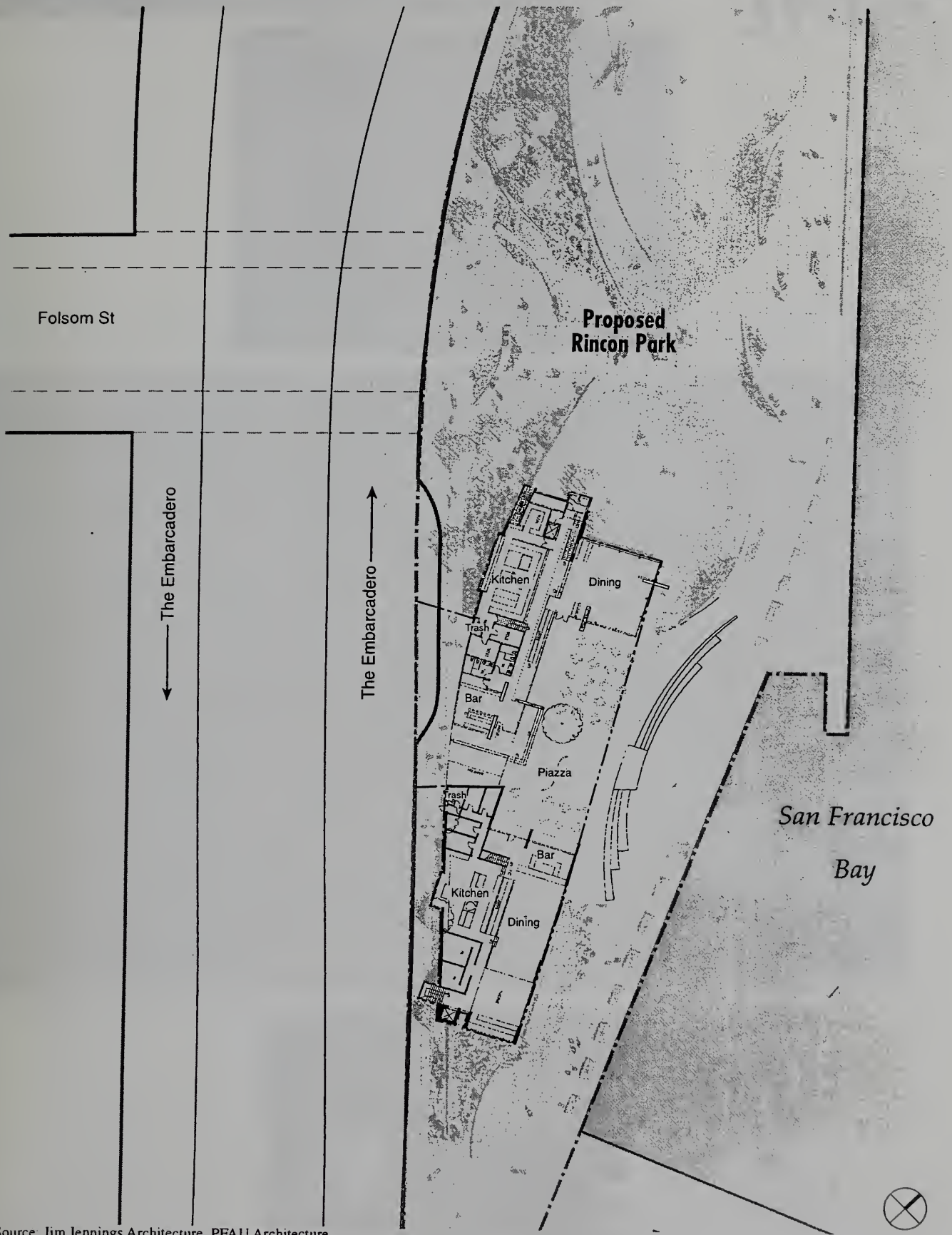
RESOLVED, That the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the Consent

Agreement, First Amendment to DA, and amended Lease (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits) that the Executive Director, in consultation with the City Attorney, determines is in the best interests of the Port, do not alter the rent or the Port's projected income from the Project, and otherwise do not materially increase the obligations or liabilities of the Port or City or materially decrease the public benefits accruing to the Port, and are necessary or advisable to complete the transactions which the Consent Agreement, First Amendment to DA, and Lease contemplate and effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the Consent Agreement, First Amendment to DA and the amended Lease and any such amendments to any such documents; and be it further

RESOLVED, That the Commission authorizes the Executive Director to execute and enter into any additional documents as he deems necessary or appropriate, in consultation with the City Attorney, to consummate the transactions contemplated hereby or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any such documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of June 12, 2003.

_____
Secretary



Source: Jim Jennings Architecture, PFAU Architecture

90.088E: Rincon Point-South Beach
Redevelopment Plan

EXHIBIT A

JMA

360 Spear Street
San Francisco, California

Located only one block from Rincon Park, this 180,000 square foot building underwent a $17,000,000 renovation in 1999-2000. This former warehouse built in 1923 was used by the GSA for military storage purposes and by Bill Graham's Winterland to make T-Shirts and other concert related apparel.

The project involved a complicated entitlement process due to its former use and JMA's desire to reposition the building as San Francisco's first private telecommunications facility. Due to its strong internal entitlements team and the assistance of its entitlement counsel, JMA was able to obtain a completely new interpretation of the San Francisco planning code permitting this new high technology use.

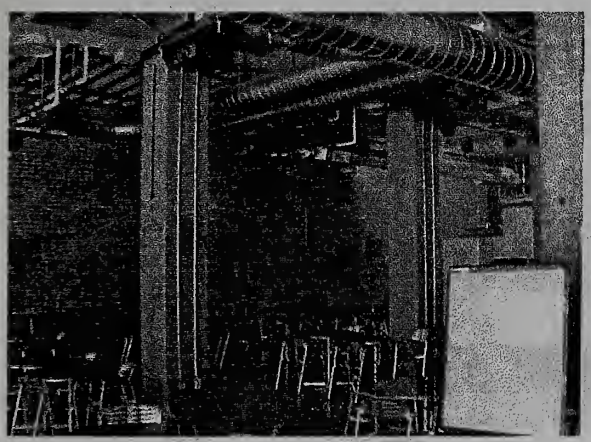
The project is 100% leased and came in under schedule and under budget and is one of the best urban telecommunications facilities anywhere in the country. Art Chapman and Todd Chapman handled entitlements for the Project while Damon Chan handled the extremely complex renovation and construction activity at the Project.

EXHIBIT B

123 Townsend Street/The Townsend Building
San Francisco, California

This historic 170,000 square foot project is located in a hundred year coffee warehouse directly across from the Pac Bell Park. JMA and its team worked tirelessly with the San Francisco planning department and neighborhood leaders to entitle the project for its eventual end use as a creative office building that blended in with the local brick and timber feel of the Pac Bell Park area.

The project was acquired in December of 1999 and underwent a $18,000,000 rehab that included a complete seismic upgrade and a historic renovation of the north and south facades of the building. E*Trade leases 100% of the building and due to the efforts of JMA's team was able to begin occupying the building a mere 8 months following JMA's acquisition of the property. Art Chapman and Todd Chapman handled entitlements and community input while Peter Clark and Damon Chan were responsible for base building construction and tenant improvement work.



JMA

2967 – 2969 Woodside Road/The Village Pub Restaurant Woodside, CA

Begun as the renovation of an existing building, this project evolved to encompass the complete, ground-up construction of an 11,200 sq.ft. building in one of the most restrictive development environments anywhere in California. *All development* in the Town requires a conditional use permit and must satisfy the very stringent growth management and design review requirements of the Town of Woodside. Entitling the building required numerous public hearing meetings and significant public input with respect to the eventual design of the building. All told the entitlement, design and construction process took approximately 48 months but in the end everyone was rewarded with a project that is now a community focal point for the Town of Woodside and surrounding communities.

The building houses JMA's first restaurant venture, The Village Pub, which has received accolades nationally for its style, atmosphere and cuisine. "The Pub," as Woodside residents know it, is the very modern and popular reincarnation of a long-time Woodside meeting place, in operation since the 1950's. JMA rose to the challenge of satisfying the voices in the community and local government that called for preserving the character and feel of the Pub as a local institution while updating its ambiance to please even the most discerning clientele. Art Chapman and Todd Chapman handled entitlements for this Project and Peter Clark coordinated construction efforts.

EXHIBIT B

EXHIBIT C
COMPARISON OF BASIC LEASE PARAMETERS
RINCON PARK RESTAURANTS PROJECT

	EXISTING LEASE	PROPOSED AMENDMENTS
Tenant	Rincon Park Restaurant, LLC (Nice Ventures, Inc., managing member)	JMA Waterfront Properties, LLC (JMA Properties, Inc., managing member)
Guarantors	Guarantees from entities that provide guarantee to construction lender.	Art Chapman and Peter Clark to guarantee lien-free Completion of Construction under LLDA.
Premises	An approximately 20,000 S.F. Site located between Folsom and Harrison Streets to the east of The Embarcadero	An approximately 20,000 s.f. Site located between Folsom and Harrison Streets to the east of The Embarcadero.
Uses	Two restaurants and outdoor plaza for restaurant dining and public circulation. The footprint of the restaurant building(s) shall not exceed 12,000 S.F.	Two restaurants and outdoor plaza for restaurant dining and public circulation. The footprint of the restaurant building(s) shall not exceed 12,000 S.F.
Term	40 years from completion of construction, with two 5-year options to extend	40 years from completion of construction, with two 10-year options to extend.
Initial Minimum Rent	$200,000 per year, offset against percentage rent	$200,000 per year, not offset against percentage rent
Development Period Rent	$5,000 per month from execution of the LLDA.	$5,000 per month commencing upon execution of lease assignment documents, and continuing until completion of construction.
Rent Credits	Tenant accepts Premises in "as is" condition. Maximum rent credits of $759,000 for site preparation and related construction items individually capped, applied against 50% of percentage rent	Tenant accepts Premises in "as is" condition. Rent credits equaling the lesser of: (1) the actual costs of site improvements to create retail pad (including geotechnical study, Hazardous Material Remediation, soil compaction, installation of piles, removal of abandoned water main, and stubbing utilities to pad), or (2) $759,000. Rent credits to be applied against 50% of Minimum Rent and 100% of percentage rent until fully amortized.
Increase in Minimum Rent	Increased annually to lesser of (1) the percentage cost of living increase, or (2) 3.5%	Cost of living increases at end of 5th and 10th operational years, not less than 10% or more than 20%.

	Adjusted to fair market rental on 25th, 30th, 35th anniversary dates of term, and at beginning on each Extended Term.	At the end of 20th and 30th operational years and at beginning of each extended term, adjustment to fair market ground rental for land without building improvements. Any downward adjustment not to exceed 85% of Minimum Rent prior to adjustment.
Participation Rent	3% of gross receipts (less sales taxes and Minimum Rent).	Port Participation Rent equal to 10% for first 10 years and 15% for subsequent years of Tenant's Rental Receipts over an artificial Breakpoint of $616,000 per year. Breakpoint shall be increased if second floor is installed in south restaurant as a part of the Initial Construction. Breakpoint shall be adjusted proportionate to any changes in Minimum Rent throughout the Term. Tenant's Rental Receipts shall include all rent received by Tenant, including minimum rent and percentage rent, but excluding triple net reimbursements. Participation rent calculated and paid quarterly, with annual reconciliations.
Net Sales Proceeds	None	For first sale, Port participation of 25% of net sales proceeds after payment of transaction costs, the return of initial and subsequent development capital costs, and a cumulative 15% cash flow return on equity. For subsequent sales, 15% of net sales proceeds after deducting transaction costs and purchase price of the then seller.
Refinancing Proceeds	None	None
Payment of past LLDA Costs	Not applicable	Tenant shall pay Port $50,000 of past due LLDA fees upon approval of BCDC permit.

F:\Rincon Park Restaurant\Assignment\Port & Board Hearings\KB Comparison table of JMA lease terms EXHIBIT C.docPage 2 of 2

DOCUMENTS DEPT.
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SAN FRANCISCO
PORT COMMISSION

JUNE 12, 2003
MINUTES OF THE SPECIAL MEETING

MEMBERS, PORT COMMISSION

HON. MICHAEL HARDEMAN, PRESIDENT
HON. KIMBERLY BRANDON, VICE PRESIDENT
HON. MICHELA ALIOTO-PIER
HON. SUE BIERMAN
HON. WILFRED HSU

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION

MINUTES OF THE SPECIAL MEETING
JUNE 12, 2003

1. ROLL CALL

Commission President Michael Hardeman called the meeting to order at 3:17 p.m. The following Commissioners were present: Michael Hardeman, Kimberly Brandon, Michela Alioto-Pier, Sue Bierman and Wilfred Hsu.

2. APPROVAL OF MINUTES - May 27, 2003 Special Meeting

ACTION: Commissioner Brandon moved approval; Commissioner Alioto seconded the motion. All of the Commissioners were in favor. The minutes of the May 27, 2003 Special Meeting were adopted.

3. EXECUTIVE

A. Executive Director's Report: Mr. Byron Rhett, Director of Planning & Development, reported the following:

- Restarting of the Ferry Building Clock
  Mayor Willie L. Brown, Jr., the Port of San Francisco and the Ferry Building Investors have announced the re-starting of the Ferry Building Clock on Tuesday, June 17th at noon. Public ceremonies are scheduled to start at 11:30 a.m. at Harry Bridges Plaza in front of the Ferry Building. The Commission and the public are invited to attend the ceremony.

- Port Commission Meetings at the Ferry Building
  Effective June 24, 2003, the Port Commission meeting will be held in the Port Commission Room located on the second floor of the Ferry Building starting at 3 p.m.

Executive Director Wong joined the meeting at 3:30 p.m.

4. MARITIME

A. Request for adoption of a policy and program to eliminate discharges of wastewater and ballast water by Cruise Ships into the San Francisco Bay, directing the establishment of air quality and water quality advisory groups, and directing the preparation of incentive measures and enforcement mechanisms. (Resolution No. 03-39)

Director of Maritime, Peter Dailey, indicated that the Port of San Francisco has one of the most diverse maritime business portfolios of any port in the world. Cruise shipping is one of the Port's leading maritime industries adding significant economic vitality to the City

and the entire Bay Area. The Port's primary role is to provide economic benefit to the City and the region but equally important is to provide and lead in environmental stewardship and strike the balance between the environment and the economy. This industry directly benefits the maritime industries such as tugboats, pilots, longshoremen, stevedore companies, ship suppliers and ship repair. San Francisco Drydock Inc., which employs hundreds of workers representing ten different trade unions, generates a significant portion of their total work from cruise ship repairs and maintenance. The industry also is beneficial to San Francisco's leading industry, tourism, which is in the midst of an unprecedented malaise. Spending by cruise ship passengers helps airlines, hotels, taxis, restaurants and shops. A Port Economic Impact Study showed that over $35 million in annual economic benefits are derived from the cruise industry.

The Port of San Francisco's current cruise terminal at Pier 35 was constructed in 1914 and is nearing the end of its useful life as a functional cruise terminal. During the last several years, Port staff has planned to develop a new international cruise terminal at Pier 30-32, which will be named after labor leader, James R. Herman. This project, approved by the Port Commission on March 25, 2003, is subject to Board of Supervisors approval.

It is anticipated that construction of the new cruise terminal may begin by mid-2005 and completed approximately three years thereafter. During this interim period in which there is and may be increased demand for cruise calls at an inadequate facility, Pier 35 will continue to operate as the primary cruise terminal facility in San Francisco.

As part of the proposed James R. Herman Cruise Terminal and mixed-use project, the Major Environmental Analysis Division of the San Francisco Planning Department completed an environmental review under the California Environmental Quality Act (CEQA). The Supplemental Environmental Impact Report (SEIR) was published in November 2001 and was certified by the Planning Commission in May 2002. Bluewater Network filed an appeal to the Board of Supervisors, and the Board remanded the SEIR to the Planning Commission. City and Port staff and the cruise terminal developer worked with Bluewater Network to revise the document culminating in a letter from Bluewater Network supporting the revisions. The SEIR was revised and certified by the Planning Commission in November 2002. San Franciscans for a Healthy Waterfront filed another appeal, and the Board rejected that appeal thereby certifying the SEIR in January 2003.

The SEIR identified a number of mitigations that could, upon implementation, mitigate any environmental impacts of the cruise industry in San Francisco. The SEIR calls for these mitigations to be in place prior to the construction of the cruise terminal at Pier 30/32. Port staff is supportive of efforts to require cruises ships to employ more stringent environmental practices for San Francisco cruise terminal operations. As a part of staff's plan to develop a new, world-class cruise terminal, the Port Commission has already adopted a set of progressive environmental initiatives aimed at the cruise industry. Staff recommends that appropriate measures developed as part of the Pier 30-32 project be extended to all cruise terminal operations in San Francisco.

The details of the plan is included in the staff report. The proposed resolution establishes a Port Commission policy to prohibit cruise ships using Port facilities from discharging sewage, gray water, hazardous waste, solid waste, fuel or oil-related substances, or

unauthorized ballast water into San Francisco Bay waters. The proposed resolution implements these policies by requiring Port staff to prepare a standard form berthing agreement for adoption by the Port Commission that will require cruise lines to comply with all laws regarding discharge. The berthing agreement will also require that cruise lines prohibit any unauthorized ballast water and wastewater discharges while in port until such time as ballast and wastewater treatment methods adequately meet federal or state statutes and require that all cruise ships report to the cruise terminal operator and Port's Maritime Operations Manager all incidental or intentional discharges within San Francisco Bay. Failure to report any discharge within 24 hours may result in denial of future berthing at the Port of San Francisco. These programs will include a financial incentive program to be adopted by the Port Commission that will encourage cruise ships to burn low sulfur fuel while in berth. Within 90 days of adoption of this resolution, the Executive Director is directed to appoint members of the water and air quality advisory groups which creates an on-going dialogue between the maritime industry, regulatory agencies, environmental organizations and community groups to continually evaluate feasible, new technologies and programs, such as shore-based power and low sulfur content fuel, that may be potentially implemented by the Port Commission. Having everybody at the same table working on the same problem, in the Port's experience, have been very successful. Other examples at the Port in taking this model was the development of the Hyde Street Harbor. In the Pier 45 renovation project, the Port Commission established the Water Quality Advisory Group which meets monthly and is a meeting between the fishing industry, environmental groups, swimmers, etc. to come up with a tangible, programmatic ways to protect San Francisco Bay and at the same time, let the fishing industry flourish. This model will work well for the cruise industry as well and is a strong effort to make San Francisco very progressive, ambitious environmental Port and have the most environmentally sensitive terminal operations than any port in California. It will be a working effort and a balanced approach. Staff is confident that it will work and looks forward to working with all aspects of the spectrum from the cruise industry to the environmental organizations to learn more about this industry and ways to have better operating practices in San Francisco Bay. This policy and program will be the most ambitious environmental initiative of any cruise terminal operation in California.

Teri Shore, Bluewater Network, indicated that the daily air pollution emissions from cruise ships entering San Francisco Bay today equal those of the Hunter's Point Power Plant. Yet, San Francisco Port is not proposing a single specific measure to reduce the 87 lbs. of particulate matter and half ton of smog forming emissions that are brought in by the fleet of luxury liners. One single cruise vessel emit the emissions of 12,000 cars. This is a significant air emission source and the policy before the Commission proposes a plan that would simply set up an advisory group whose recommendations "may potentially be implemented by the Port." This is not an acceptable way of addressing the significant new air pollution emissions that threaten both the public health and the long-term air quality of the bay area. The Port needs to take immediate actions, not to defer them to an air quality working group without absolutely no authority and no timeline. The bans on cruise ship dumping is much stronger. The Port has made some solid recommendations but her recommendations for revisions would make it a clear ban without any wiggle room or loopholes for the industry. Bluewater Network urges the Port Commission to reject the resolution and table it until such time that specific air and water pollution measures are incorporated including prohibit all cruise ship wastewater and ballast water discharges

into the bay, treated and untreated, as the City of Monterey has already done. Require use of on-road diesel by cruise ships when operating in San Francisco Bay, as the Port of Seattle has already done. Require cruise ships using the new cruise ship terminal to hook-up to shoreside power at the new terminal facility as Princess Cruises has done in Juneau Alaska and conduct a feasibility study and implementation plan. Impose a passenger fee on cruise ships to pay for environmental monitoring and port infrastructure and impose mandatory penalties and fines on cruise ships that violate Port standards. She distributed a packet of detailed information on her comments and recommendations to the Port Commission along with a book that has been written about the cruise industries, environmental social justice and labor practices.

El St. John, San Franciscans for a Healthy Waterfront, indicated that the $35 million income from the cruise terminal that Peter Dailey mentioned does not include the cost to clean up the pollution and the cost of traffic emissions. San Franciscans for Healthy Waterfront were not defeated at the Board of Supervisors hearing. In fact, the Board said they would approve the EIR as it was but they expected and insisted that the Port have to mitigate the environmental issues. It is for that reason that they are before the Commission speaking about the ordinance. She distributed packets of information to the Commission. On a personal note, Ms. St. John indicated that she moved to San Francisco in 1996. She lives near the bridge, in front of the proposed terminal. The result of a chest x-ray taken before a surgery a few years ago was fine. She never smoked or done anything wrong. She recently had a surgery on her hand and the chest x-ray indicated that she's in trouble. Her doctors relate it directly to the emissions from her neighborhood. According to the EIR, the community is at the maximum limit of emissions and environmental problems now. This would mean that if a cruise ship terminal were built in that neighborhood, another half a ton of smog would be added to what is already there. Children and senior citizens live in the community. Earl Gee wrote that these much needed environmental mitigations have nothing to do with taking away jobs or preventing cruise ships from coming to San Francisco. As a matter of fact, they don't want to kill those people, the stewards who are manning the bay and making money. They don't want to kill them by allowing the diesel particulates to get into their lungs. This is a health issue. These environmental issues have to be looked at in relation to how much money the Port will be making. The Port Commission has had an opportunity to show leadership, responsibility, and accountability on these issues. She asked the Commission to use its authority wisely to strengthen the resolution's environmental mitigation enforcement and penalties to safeguard the health of the community and to provide the accountability that San Francisco deserves. They need the Commission to work with them to take care of this issue. The cruise terminal can without too much difficulty be moved to Pier 48, saving them from the diesel fumes. They have paid thousands of dollars to study the site. There are two slips available at the pier. The pier needs to be retrofitted. It will cost a lot less money than building a terminal at the proposed site and there will only be about 12% of the environmental issues they have to contend with; 88% would be mitigated if the terminal is located at Pier 48.

Commissioner Bierman asked why Pier 48 was better than the proposed site. Ms. St. John replied that the electrical grid, the power system at Pier 48 is different than it is at Pier 30/32. In order to bring more power to Pier 30/32, it would cost millions of dollars. Pier 48 has enough power which can be used immediately and this would mitigate the diesel particulate problem.

Randy Zurcher, Bluewater Network, indicated that the resolution before the Commission originated as a Clean Bay Ordinance that Bluewater Network proposed to the Board of Supervisors through Supervisor Chris Daly to address cruise ship, air and water pollution. It was rewritten by the Port into a resolution that removes environmental measures, enforcement and penalties and downplays its significance of cruise ship pollution. The rewrite was conducted without any consultation with Bluewater Network. Instead of protecting the health of San Franciscans by passing a policy that will immediately reduce cruise ship air pollution and stop cruise ship dumping in the bay, Port staff has proposed that the Commission adopt a resolution that falls short in banning cruise ship dumping and does nothing about the air pollution. New studies are coming out everyday indicating that we need to do more to protect our air and water. The Oceans Commission released a report stating that our oceans are at risk from pollution. Also this week, the union of concerned scientists released a report stating that the bay area is one of the worst areas in the nation for diesel pollution. They also have new data from the Bay Area Air Quality Management District, who supports them in seeking these air pollution mitigations. Cruise ships pollute the air as much per day as the deadly Hunter's Point Power Plant. Still, the Port of San Francisco is doing little to prevent cruise ships from dumping their water pollution into the bay and doing practically nothing to mitigate the air pollution from cruise ships. In the recent past, his contacts with the Port commission has led him to believe that the Commission defers to Port staff for all substantive decisions. For the three new members, this is a chance to change that approach. Port staff has been hired to look out for the Port in the best way they see fit. The Commission, on the other hand, have been hired to do more. They have been appointed to the Commission to protect the public's interest including the health of the public of San Francisco. The resolution before the Commission does not go nearly far enough to do that. He has made several efforts to meet with Port Commissioners and Port staff and with the exception of one Port Commissioner, who is no longer on the Commission, each time he was deferred. His door is still open. He will be happy to sit down with the Commission and Port staff for the health of San Franciscans and the health of future San Franciscans. He urged the Commission not to pass the resolution.

Ernestine Weiss concurred with the previous speakers about mitigating the air pollution coming from the cruise ships. There are a lot of cars on the Embarcadero that emits bad air emissions. The health of the City comes first. It is cheaper to do the mitigation now than remedy the problem later. She asked the Commission to consider the health of the people of San Francisco.

Patrick Andrich, Metropolitan Stevedore Company, Vice President of cruise operations, indicated that their company manages the cruise facility at Pier 35 along with Los Angeles, Long Beach, San Diego and Port Hueneme. He has been in the cruise business for the last 20 years and has seen the business grow tremendously. This is the best year San Francisco has had. Port staff worked so hard to bring the cruise ships to the Port. The economic impact to the Port and to the City is tremendous. One cruise ship alone creates 100 jobs for one day. These jobs are longshoremen, security personnel, and ground staff. The passengers and crew that come into the community spend money. He understands the need for protecting the environment. In his 20 years with the cruise business, he has seen the cruise lines make some big strides in their environmental programs. He also observed that the cruise ships are portable, which means that when costs and conditions get to be

too extreme, the cruise ships go to other ports. Port staff's proposal of establishing an advisory group is an excellent idea. The industry gets to be primarily involved in their future at the Port. This type of advisory group worked really well in the mid-90s when the Dept. of Transportation was drafting new security regulations for cruise ships and cruise terminals. The advisory group was heavily involved in the industry and worked out the regulations. It shows wisdom to bring all the players in and determine what has to happen to give the greatest benefit to all the people.

Espanola Jackson, resident of Bayview Hunter's Point, indicated that she was frightened about all the pollutants from the cruise ships that were mentioned at a Board of Supervisors hearing. A lot of the people in the Bayview Hunter's Point community are sick from all the pollutants but they have to live with it because they have nowhere to go. The Port needs to look at this proposal very closely, work with the environmental groups and be concerned about the dumping of the gray water because the sewage plant is in their community. The Bayview Hunter's Point community had been lied to over and over again. People talk about hundreds of jobs but no one talks about thousands of deaths. She asked the Commission to consider the health of the people of San Francisco.

Brian McWilliams indicated that tremendous amount of work has gone into this project for a long time to create a sustainable industry and sustainable jobs in a sustainable environment. The Port has shown great leadership in going ahead with the program that really is only designed to mitigate the issues at Pier 30/32. The Port is implementing a program that is very progressive. It is more than is required of the Port to do or have to do. It will take into account all the cruise ships that come into San Francisco which will present an opportunity to develop programs that will become more apparent as times goes on so that we can have a sustainable environment with sustainable jobs. He has sailed as a sailor on cruise ships. He is a longshoreman. He works around diesel trucks all the time. He is familiar with those issues. He works in Bayview now. He understands that the issues people talk about are real. People are suffering behind the kinds of environmental pollution that have been related to the Commission but this is an opportunity for the Port to move ahead. He supports the program that the Port is putting forward. This is an industry in transition. There are a number of proposals to bring barges alongside the pier to plug into. There are new concepts. Things are changing everyday in the environmental area related to diesel fuels, clean fuels, alternative fuels, and mitigations for all these issues. The Port has done everything to accommodate the concerns related to the mandate that has to be in place before the cruise terminal opens in 2008. He complimented Port staff and the Commission for the leadership they have provided. He urged the Commission to approve the resolution.

Catharine Hooper, Inchcape Shipping and a Port agent, indicated that cruise lines do not have offices in the City so they retain the services of an agent when they bring a ship into the Port. She supports the proposed resolution. She thinks that the Port has done a very admirable job of accommodating all of the serious environmental issues related to the cruise ships coming into the Port. It leaves room open for the Port to bring in more environmental issues as technologies improve. She has been in the cruise industry since 1973. As Pat Andrich said, the cruise lines have started towing the line a lot more because of public viewing and because they are genuinely conscientious about the water and the area they go into. This is their livelihood. This is where they take ships. They have done a

tremendous amount to correct some of the unaware ills that they have brought upon the seas. The scope of the economic benefit to the City is innumerable. For the benefit of the new commissioners, a Port agent spends the money. They disburse the funds for the services that are required to bring a ship in and turn it around quickly. To date, she disbursed $167,000 for the ship that came to the Port in March. The funds go primarily to labor in the City. There are very qualitative reasons to bring a ship in and still accommodate the environmental issues. There are rings of benefit to the City, to the City coffers in terms of head taxes and unsecured property taxes. When the Oreana ship was in port, she disbursed $38,000 in head taxes alone. Labor unions, stevedores, union guards and other people were brought in to work with Metropolitan. Union clerks, union mechanics, inland boatmen benefit when a cruise ship is in port. Waterfront labor, tugs, barges, bunker and lube suppliers, pilots, Port agents, crew transfers, terminal, management, San Francisco Drydock, ship chandlers and others benefit from the cruise ship. Passengers come in the City stay in hotels and spend money. Crews have money and shop at Fisherman's Wharf, Union Square for themselves and their families. Crews go to the dentists and doctors. They spend money at drycleaners and at the post office. The cruise lines care from the heart about not purging our environment. They have their internal policies that go broader than what they are required to do in many ports. From that point of view, she feels that they are responsible citizens. Tourism is the biggest industry in the City. The Port of Astoria Washington is trying to steal our ships away from us. As Mr. Andrich mentioned, ships have one thing that we can't control and that is portability. The Port of San Francisco is being perceived as one of the most expensive port cities to bring a ship into. They keep coming here because this is a world-class city and passengers demand it.

Andrew Finkelstein indicated that Our Children's Earth Foundation is a non-profit organization located in San Francisco, dedicated to protecting the public from harmful effects of air pollution. Through a strategy of litigation, education and advocacy, they empower individuals to make decisions to impact air quality at local, state and national levels. The San Francisco Cruise Terminal project has significant implications and potential consequences for the Bay Area. As a result, air pollution from cruise ships requires serious and immediate mitigation in the bay area. Residents will be exposed to dirtier air, to increased probabilities of suffering from respiratory elements and increased exposure to cancer causing agents such as particulate matter. For these concerns, Our Children's Earth Foundation joins other groups including Bluewater Network when they urge this Commission to reject this resolution until it is strengthened to accommodate some of their concerns. He reiterated that the Port should prohibit all cruise ship wastewater discharge into the bay, whether it is treated or not. Currently, this resolution proposes to conditionally prohibit only some of the discharges and it does not require any air emission reduction measures. Further concerns that should be incorporated into strengthening the resolution include requiring the use of on-road diesel by cruise ships in the San Francisco bay, conducting a comprehensive study of shoreside power for cruise ships and posing a passenger fee upon the cruise ship to pay for environmental monitoring and imposing penalties on cruise ships that violate any of those standards. This Commission should take on this responsibility for protecting the health of those that live in and around the Bay Area by adopting the policy that limits air pollution from cruise ships. These concerns have far greater consequences than any potential economic interests than do both the City and the cruise industry.

Jeffrey Leibovitz, member of the San Francisco Redevelopment Agency's Rincon Point-South Beach CAC, indicated that to attest to their success as a committee and citizens committee with the Agency, he hoped that the Commission have enjoyed the waterfront from the Rincon Park to China Basin Park. With citizens' efforts, they have been extremely successful, in particular, South Beach, with working with the Agency, private enterprise, private investment and with the Port. They were responsible for asking the Port to adopt much of the mitigation that is before the Commission. They look forward to working with the Port and citizens in San Francisco in adopting this mitigation so that we can all benefit from it. The industry is here. The cruise ships are here. They are not just coming to San Francisco. They presently exist in San Francisco and we hope to make them a better industry through best practices. He thinks that Bluewater Network is somewhat disingenuous to single out a single industry of cruise lines that come in to San Francisco that represent 1% of the shipping traffic that comes in to San Francisco. He also thinks that it is disingenuous of them to represent 12,000 automobiles through one car. When in fact, the San Francisco Bay Bridge handles 250,000 cars a day. He thinks that it is misleading. He asked the Commission to pass the resolution so they can begin the process of forming the citizens groups and implementing the mitigation. This is a delay tactic on their part. It is a delay tactic on San Franciscans for Healthy Waterfront. Many of those folks live across the street from the proposed new cruise terminal and their views will be blocked. They will be inundated with traffic. We know that we can handle the traffic. He was a member of the ballpark Mission Bay Transportation Coordinating Committee. They were successful. They asked that as a mitigation that the cruise terminal be implemented into or admitted into the same community or that same organization. They will adopt mitigation that will handle the traffic. He asked the Commission to pass the resolution so they can move forward.

Michael Sweet, Vice Chair of the Rincon Point-South Beach CAC and resident of South Beach, indicated that there is a different story than what the Commission is hearing. The CAC has worked very hard with the developers and Port staff to move this project forward in a way that make sense to the neighborhood and for the City. They were instrumental in voicing an opinion which led to the selection of this developer over another because they believed that this developer would be most responsive to neighborhood views and most receptive to what they needed to do. Finally after 3-4 years, they've arrived at this point. They went through the fight on the EIR. They opponents to the EIR didn't just get one bite of the apple but two. They are coming back for a third. Bluewater Network who negotiated a resolution that led to the mitigation measures that is before the Commission are now back telling the Commission it's not good enough. San Franciscans for a Better Waterfront who are here and who have thrown up their hands for every opportunity they had in the last two years are here again proposing that we move this terminal to Pier 48 which is not an option. The true answer to Commissioner Bierman's question about relocating the cruise terminal to Pier 48 is because it won't block someone's view. The community is behind this project. This project needs to move forward. These mitigation measures are some of the most aggressive ones in the country. They believe that the Port, staff and the developer will do right by the City, will do right by the community and it is time to move this project forward. They support the project, the community wants to see it and the City needs it.

Earl Gee, San Franciscans for a Healthy Waterfront, strongly urged the Commission to reject the resolution. Bluewater Network worked very diligently to craft a thoughtful, comprehensive Clean Bay Ordinance, prohibiting wastewater discharges, requiring cleaner fuels, monitoring and berth fees. Unfortunately, the Port watered down the ordinance with this resolution to render it ineffective. Today's resolution does little to change the way things are nor does it protect the bay and the health of San Franciscans and the huge increases in cruise ship pollution. It is an absolute necessity that cruise ships be hooked up to shoreside power while in Port. Each day, a cruise ship emits smog forming emissions equal to 12,240 vehicles. Imagine a cruise ship spewing out the cancer causing emissions 80 to 100 days a year, 24 hours a day while in port. Lack of shoreside power is an issue that determines whether the Port will cause costly mitigation due to the cancer causing diesel particulate lunged deep in the lungs of bay area residents, simply because local government did not heed the warnings and documented evidence of health threat in cruise ship emissions. The resolution must include the mandatory use of shoreside power as a condition for a cruise terminal operation. In addition, the location of the terminal at the Embarcadero and Bryant Streets, a busy intersection and a main entry point to the Bay Bridge, highway 280 and Pac Bell Park will create gridlock that will effectively shutdown the Embarcadero. The resulting air pollution combined with the Bay Bridge's auto exhaust diesel emissions, brake dusts, and asphalt sediment will render the area unlivable with pollution levels far beyond the Bay Area Air Quality Management District's Standards. These much needed environmental mitigations have nothing to do with taking away jobs or preventing cruise ships from coming to San Francisco. This is about our health. The Port Commission has the opportunity to show leadership, responsibility and accountability on these issues. He asked the Commission to use the authority they have as a Port Commission wisely, to strengthen the resolution's environmental mitigation, enforcement and penalties to safeguard their health and to provide the accountability that San Franciscans deserve. They have over 5000 signatures collected to mitigate these issues.

Grant Donnelly showed the Commission the effects of the pollutants emitted by the cruise ship to the people in the community.

Commissioner Bierman indicated that representatives from the Bluewater Network and others mentioned that Monterey and Seattle have guidelines that are stronger than the Port's, she asked if it was true. Mr. Dailey replied that the Port of Seattle has a pre-requisite for certain ships that can burn low sulfur fuel as a part of a homeport program. There are 15 ships that call in Seattle and only two of the ships can burn low sulfur fuel. This program only started last month. The Port of Seattle does not offer fee incentives to burn low sulfur fuel to cruise lines. They have not set up working groups regarding air quality plans. He salutes them for having two of their 15 ships burn low sulfur fuel but he would be disappointed if six months from now, the Port of San Francisco is not doing better than that. Once the working groups are in place and the cruise lines are at the table with us, they would be able determine how many of them can burn low sulfur fuel. He was recently in Miami calling on cruise lines asking them about low sulfur fuel and they are receptive with the issue and are willing to work it out. The problem is there are 27 different ships from 15 different companies that call in San Francisco and the mechanics of certain ships at this point cannot handle that type of fuel but they are very positive in working with the Port and the working groups to establish a low sulfur fuel commitment.

The goal of the working groups is to have more ships burning low sulfur fuel when feasible.

Commissioner Bierman indicated that if Monterey and Seattle are doing better that this program would suggest, it should be noted in the staff report that there will be efforts made. It troubled her that the Commission is passing a resolution that is not as strong as Monterey's or Seattle's. Mr. Dailey replied that this program, when adopted, will be stronger than Seattle's and will be at the forefront of all American ports in terms of cruise ships environmental practices. He agreed that the best way to do that would be for Port staff to work collaboratively with the environmental organizations and regulatory agencies and hash out real pragmatic solutions to this problem. The mechanism is sound as it's written. Port staff will report to the Commission as to the progress of its efforts. The Commission will have an opportunity to take staff to task if the Commission feels that staff is not coming up with feasible alternatives to cleaning up the environment.

Commissioner Brandon indicated that this is the first step in the process. Everyone should understand that at the Port nothing happens without an advisory committee. However, she agreed that there should be some type of timeline or a status report to the Commission regarding this project. She asked who will be responsible for monitoring the ships to see if there are air quality or discharge issues. Mr. Dailey replied that the proposed program has a reporting function for the cruise lines to report to the Port of any discharge incidental or otherwise within 24 hours of the incident. The Port will work with the Regional Water Quality Board, U.S. Coast Guard, the California Water Commission and the State Lands Commission, who have different authorities to triangulate and to make sure that the cruise lines are adhering to the policies. If the cruise lines are found to be in violation and not reporting correctly, there are mechanisms in the policy to ban them from calling at the Port. If they can't be a good neighbor, we don't want them here.

Commissioner Brandon asked if the US Coast Guard could provide the Commission a quarterly report. Mr. Dailey indicated that staff suggested that the US Coast Guard be a part of the advisory committees along with the Regional Water Quality Board and through the working groups, a mechanism would be developed to report back to the Commission on adherence to the policy.

Commissioner Brandon asked for updates periodically regarding the advisory groups and the status of the process. Mr. Dailey replied that he hoped to formulate the groups by the end of summer and one of the items on the agenda for the air quality working group will be low sulfur fuel. Port staff will try to get the cruise lines to implement low sulfur fuel while in port.

Commissioner Alioto indicated that when talking about these environmental forums and looking at what we are doing here, she asked if this was discussed with other ports in California. It seems to her that coming at this from San Francisco's point of view, it would be much stronger and we would probably have a louder voice with the cruise companies if Long Beach, Los Angeles and San Diego were on the same page. She wondered if staff talked to them about what we do here.

Mr. Dailey replied that there were 3,028 ships that came underneath the Golden Gate

Bridge in 2002, of which 42 were cruise ships (approximately 1.4%). The pollution of large ocean going vessels is an issue that has to do with the seven ports of Northern California and there are thousands of ships that come to San Francisco or into California waters. These solutions should be done on a statewide basis on a federal level. There are some international treaties that look at cruise ships but they are not strong enough. Port staff is in contact with the California Association of Port Authorities and attends the quarterly meetings. One is scheduled in two weeks and this item is on the agenda as well as cold ironing of ships, low sulfur fuel and other alternative fuel measures. It's an item that all port managers know it's important that we have to look for the goal of cleaning the environment.

Commissioner Hardeman mentioned that it's remarkable we have an agreement at this point. There were difficulties in trying to get the location of the new cruise ship terminal, the involvement of the neighborhood for a number of years, the selection of the different teams and all the obstacles that the Port went through to get to this point. We should be extremely proud of ourselves. Port staff has done a good job. The final version of the policy has not been approved. Involving all the groups and advisory committees is a great idea. He congratulated staff and the community for all their efforts. It is time to move forward.

ACTION: Commissioner Brandon moved approval; Commissioner Alioto seconded the motion. All of the Commissioners were in favor. Resolution No. 03-39 was adopted.

5. PLANNING & DEVELOPMENT

A. Request for approval of Assignment and Amendments to the Lease Disposition and Development Agreement and Ground Lease for the Rincon Park Restaurants Project, located on The Embarcadero between Howard and Folsom Streets. (Resolution No. 03-40)

Kari Kilstrom, Planning & Development, requested the Commission's consent to the assignment of the development agreement and lease for the restaurant project to a new developer, JMA Properties, and approval of related amendments to the development agreement and lease. She recognized representatives of JMA Properties – Art Chapman, President of JMA and Todd Chapman, Vice President and General Counsel. Over 20 years, the City's Redevelopment Plan for Rincon Park and South Beach called for a development of Rincon Park including a restaurant site within the park on property that was at the time a combination of the old Embarcadero Roadway and a number of other parcels of land. In 1995, the Port agreed with the Redevelopment Agency to lease most of the designated property to the SF Redevelopment Agency for 65 years for $1 per year for the development and operation of Rincon Park. In exchange for this favorable terms, the Port retained a 20,000 s.f. site for the development and operation of restaurant and outdoor dining uses. The restaurants complement the park and provide activity and passive security to the park during the day time and evening hours. The uses are consistent with the public trust and the restaurants will provide a revenue source for the Port to offset the ongoing maintenance and operational cost of managing the 7-½ miles of waterfront property. In 1999, after a competitive bidding process, the Port entered into negotiations with a developer, RPR, for the development and operation of the restaurant site. During 1999 and 2000, the Port and Redevelopment Agency staffs along with the architectural

design teams for both the park and the restaurants conducted a very public design process for the park and the restaurant site and that process involved the participation of the citizens advisory committee, Rincon Point South Beach, BCDC staff and their design review board. By February 2000, they have developed a consensus on the overall design of the park and the restaurant site whereby the park would surround the restaurants and maximize the interplay between the outdoor dining area, the park and the promenade. This concept was embraced by the Port, Redevelopment Agency, CAC and BCDC. At that point the goal was to develop and construct both the park and the restaurant site concurrently even though each would be developed by a different entity. The park received its BCDC permit in 2000 and the Redevelopment Agency took site control in the fall of 2001 and opened Rincon Park earlier this year. The development of the restaurant site was more complicated than the park. The development process has been somewhat protracted. The Port and RPR executed the development agreement and lease in October 2001 for the development of the restaurant site. Several months later, RPR was unable to perform on its obligation under the development agreement and after various uncured defaults, the Port exercised the assignment remedy requiring RPR to assign its interest in the development agreement and lease to another party acceptable to the Port. The Port negotiated this remedy specifically so it would have an efficient mechanism to find a financially viable developer capable of completing the project in the event of default. The Port had two objectives: (1) to complete the project within the same time frame or close to the same time frame as originally planned and (2) to maintain continuity with respect to this overall site design that had so much community support and to maintain its entitlements which rely upon this design.

Through the assignment remedy process, JMA Properties was introduced to the Port as a candidate assignee in June 2002. After numerous discussions and negotiations with JMA over the past year, Port staff has concluded that JMA is qualified and capable of completing the project. The staff report provides further details about the development team, their development expertise and their financial qualifications. It is important to note that JMA proposes to maintain the approved design for the restaurants consistent with the design approvals that the Port Commission granted and that have been previously reviewed by the Waterfront Design Committee, BCDC's Design Review Board and the Rincon Point South Beach CAC. Now that the park has already been constructed around the shape and the design of the restaurant site, this approach is critical to the successful implementation of the project and to complete this vision as originally planned. The Port has introduced JMA and the development team to the Redevelopment Agency staff and the CAC. JMA has committed to continue the dialog with the community through the final design and operational phases of the project. Based on the Port's experience with RPR and further financial analysis of the project, staff has also concluded that a fundamental shift in the development approach is necessary to make this project economically viable..

Kirk Bennett, Planning & Development Assistant Deputy Director, provided the Commission a brief summary of the development approach and related lease amendments. He indicated that JMA is a developer and not a restaurant operator. Rincon Point Restaurants (RPR), the prior tenant, was a restaurant operator and not a developer. The problem experienced by RPR leading to their default was their inability to complete the development and the financing of the two restaurant projects, perhaps due to the market but to a great extent, it was a two-restaurant project which is a greater development

challenge that a single restaurant operator was able to undertake. With the financial structure approved by the Port Commission for RPR's restaurant operation, the only profit they would achieve was from the restaurant operation itself. There was no development return. JMA, as a developer, has a successful track record developing such projects. They proposed to restructure the transaction into a development transaction rather than a restaurant operation. Fundamentally, in this restructuring, JMA would: (1) develop the site and the building shell; (2) sublease the restaurant spaces to restaurant operators who then would build the restaurants and operate them; (3) pay rent to the Port including minimum rent, percentage rent, based on its sublease rentals and participation rent in the net proceeds from all sales. The specific amendments proposed to the fundamental terms are listed in the attachment to the staff report. The fundamental terms that did not change were: (1) The premises and the uses; (2) The initial minimum rent of $200,000, the land rental determined by Clifford & Associates in the 1998 appraisal and reconfirmed in 2000; (3) Tthe development period rent stays the same at $5,000; (4) they will be granted rent credits for creating the building path improvements which is established at a maximum of $759,000. The major changes are: (1) lease terms – the original lease was 40 years plus 2 five-year options. The proposed amendment is 40 years with 2 ten-year options; (2) Increases in the minimum rent. The original lease established annual increases being the lesser of the cost of living or 3.5% . The revised amendment calls for a cost of living at the end of the 5th and 10th years with a floor of 10 and a max of 20. The original lease provided for adjustments to the fair market rentals of the land at the end of the 25th, 30th and 35th years plus adjustments of the fair market rental of the land and improvements at the start of each option period. The revised lease provides for amendments to the fair market of land at the end of the 20th, 30th years and at the start of each option period. (3) Percentage rent – the original lease provided for 3% of the gross rental receipts as a restaurant operation after taxes; the revised structure provides in years 1-10, 10% of the tenant's rental receipt above $616,000 and after year 10, 15% of the rental receipts above the breaker. (4) The original structure did not provide for any participation in the net sales proceeds. The revised structures does. It provides for the first sale 25% of net sales proceeds after deducting transaction cost, development cost and accumulative 15% cashflow preferred return on the equity. For all future sales, the Port would participate in 15% of the net sales proceeds after only deducting the transaction costs and the seller's purchase price of the leasehold.

The projected potential revenues are less. The original proposal did not allow for any development profit. This allows for a development profit. It creates a much greater likelihood that this project would be developed. The Port received only two bidders. The qualified team was unable to put it together as a restaurant operation. It also has less risk of interruption of the income stream. A developer has an equity investment to protect and despite problems with the restaurant operators and their being unable to pay rent, the developer is still highly motivated to pay rent to protect their equity. The average Port rentals are shown in the staff report for the first 8 years assuming sale in year 8 assuming a range of potential of sales starting initially at $11 million to $16 million. The existing projections potential is shown at $360,000 to $524,000 per year. With the revised structure, it is estimated at $218,000 to $370,000 per year. While the proposed amendments would generate less potential Port revenues, it is noteworthy that the projected average annual Port rents that would be generated by the proposed terms are more in-line with the fair market rental values of $195,000 for base rentals and $270,000

for total rentals that is indicated in the Clifford Associates appraisal. It is also noteworthy that the Port is currently receiving no revenues from the site, and would continue to receive no revenues if the project is not developed. Under the proposed amendments, it is likely that the project will in fact be developed, generating fair market rentals to the Port from a non-income producing property. Moreover, under the revised structure, the risk of the on-going Port income stream from the completed project being disrupted is greatly decreased.

The project is the result of over 20 years of planning and public participation efforts. More importantly, the development of the project will enable the Port to achieve its many planning objectives, including activating the new Rincon Park, promoting public enjoyment and access to the waterfront by creating an attractive destination and generating activity in this portion of the waterfront throughout the evenings and weekends to complement the weekday office users from the financial district. JMA's proposal offers the opportunity to accomplish these objectives and Mr. Bennett requested Commission's approval of the proposed assignment and proposed amendments.

Commissioner Hsu asked about the fair market value adjustment that has been changed. Mr. Bennett replied that under the original proposal, it provided for annual cost of living throughout the term, the lesser of the cost of living adjustment annually that is capped at 3.5%. The minimum rent does increase under the original structure throughout the term based on those annual adjustments. In terms of fair market value, under the existing lease, there would be adjustments of the fair market rental of the land at the end of the 25th year, 30th year and 35th year and during the option period, year 40 & 45, there will be a fair market adjustment of the land and the improvements.

Commissioner Hsu indicated that the fair market value adjustment with land and improvements will happen at year 45 and 55. Mr. Bennett replied that the fair market value adjustment will happen in years 40 and 45. The prior proposal was in year 40 & 45. The revised proposal calls for adjustment every ten years starting in the year 20 but it will be based on the fair market rental of the land only.

Commissioner Hsu made a motion to adopt this resolution with the fair market value adjustment based on the previous agreement.

Mr. Bennett indicated that typically, the experience of restaurant operations is based on the profitability of the restaurant based upon the cashflow generated from the business. In his experience, it is typical that it is done in a ground lease. It is very rare that it is done in a piece of land and they tend to be much shorter term because the restaurant operator is looking to receive a weekly, monthly, return from the business and that is their economic model. When you turn into a development, you're looking at a different model. You're looking at a model where the developer is investing in a piece of property. They are in a real estate investment mode and development mode where they are looking at a cashflow from the income stream but that's not what usually motivates a developer. What motivates a developer is the fact that as they developed that cashflow, they can sell it. Typically, developments are done on a piece of the land because the reversion value goes on perpetuity. If the lease is too short, somewhere in the 30-40 year range, all you're selling is a cashflow. As a result, the term is lengthened so that there is an opportunity to go to 60

years to give the developer an opportunity to achieve the reversion value at the same time, it is negotiated that the Port will participate in that. If they sell the leasehold, the Port will receive 15% of the profit. It is different from a standpoint of a restaurant operation at the end of 40 years, it is now considered the land and improvements are ours. If they want to continue the lease, they will have to pay rent not on the land but also on the building. In the case of the developer we do not get the building back soon.

Commissioner Hsu indicated that he does not have a problem with the term being lengthened. He would like to see the same market rate adjustment, being CPI adjustment or 3.3% or whichever is higher to be included in this lease or another way to look at it is to have some transparency of what the developer would enter into with the subsequent tenant. If they have the same as we do, then he does not have a problem but the problem he sees is that we get a 2% increase base and a 20% capped for the first five years and after that it doesn't get adjusted until the 15th, 25th, 35, 45 & 55.

Mr. Bennett indicated that the there is a cost of living adjustment in year 5 and 10 and then there is no further cost of living adjustment that's why ten years later, the adjustment is made based on the fair rental value for the ground.

Commissioner Hsu indicated that in the original lease, we have an adjustment every year with a base. Mr. Bennett indicated that it's not on base, it's the lesser of cost of living or 3.5%.

Commissioner Hsu indicated that it's CPI or 3.5% ceiling. There is no annual adjustment. There's a fair market value adjustment every ten years. He asked if that will increase or decrease. Mr. Bennett replied that the concept of setting it up to the land is that the Port will continue to receive its fair income stream from the property and it prevents it from going down more than 15%. It could go up whatever it is but it cannot go down more than 15%.

Commissioner Hsu indicated that the fair market value would be adjusted in year 5, 15, 25, 35 and so if there is a dip in the market in that year, it will get adjusted down if there's no chance of it coming back up again because it is not adjusted every year. Mr. Bennett indicated that because it is adjusted every ten years, there's more exposure to that potentiality. If it is done every 5 years, it would even out. You might hit a bad market but you're not going to hit the bad market the next time. One way to solve that would be after the 10th year, it would be adjusted every five years. That would assure that when you did the value, the Port would be assured of getting the fair market return on that piece of land.

Commissioner Hsu indicated that we have been in a ten-year cycle and if you renew it in a bad year, it perpetuates. Mr. Bennett indicated that one of the reasons of doing an appraisal every five years, some of the appraisals takes a couple of years and we'll be assuring that we're getting our return.

Commissioner Hsu indicated that he does not have any problem approving this motion with the modification of doing the fair market value every five years instead of ten years.

Mr. Bennett reiterated that there will an annual cost of living in years 5, 10, 15, 20, 25 and

so forth. We would do an appraisal to set the fair market value so that we're assured of getting the income stream.

Art Chapman, President of JMA Properties, indicated that he was the director of Redevelopment and Community Development for Long Beach and has dealt with these issues too long. He thinks that the problem in the initial model is that the restaurant operator shared with the Port percentage rent but not in the sale of the restaurant. JMA is proposing a different model where there is a developer and they sublease to restaurant operators plus they are giving the Commission participation in both the profits in the cashflow of the operation as compared to the 3%. The problem of the Commissioner's proposal is that JMA will be entering into leases with restaurants and expecting them to invest along with them over and above the building to a million and a half to 2 million dollars. Unless they have some uncertainty in terms of the rent they will pay, they will not be able to get those leases. There are over 160 restaurants that closed in San Francisco last year. Based on their analysis, the average revenue of the restaurants in the last two years has dropped at least 25%. It will be difficult for them to execute leases that will generate $200,000 a year base rent with sublessees restaurant operators when there is the opportunity to reset the rent and readjust the rent every five years. He does not think they would be successful in being able to achieve that model.

Commissioner Hsu indicated that while it is true that 160 restaurants closed last year, there was a net gain of 144 restaurants. The restaurant business is very tough. Resetting the rent every five years based on fair market value is not unusual; to have a 60 year lease is unusual. To not have market rate adjustment based on CPI is unusual.

Mr. Chapman commented that one of the things that they have to recognize from their perspective and the Port's is that although this is a world-class piece of real estate, it will take almost a million dollars to make it developable. One of the Commissioner's comment is it's not unusual to see transactions where the rent is predicated on both the value of the land and the improvements. In this case, the improvements are extraordinarily expensive because it is unregulated landfill and it will take at least $750,000 just to put piles on the site so you can build the building. There is no foundation capability on the soil. His experience on ground leases is in leases where it is ordinary to receive cost of living adjustments on an annual basis, he has seen public leases that pass through those increases to the public sector but in restaurant and retail that is an anomaly. He has found that in commercial or office ground leases, it is much easier to pass through those annual operating escalators but particularly, in the restaurant business, it is virtually impossible today. The rents that they will be having to obtain at the Rincon Park are significantly higher than are being achieved in other Port facilities. He thinks to couple that problem with an unknown rent adjustment every five years would be extremely difficult not only for them to obtain with restaurant operators but more importantly it would be virtually impossible to finance it on an unsubordinated ground lease with restaurant operations when you're entering into contracts that the bank wants to look at the credit of, not knowing what the rent is five years nor whether they can pay it. It would be a difficult model.

Commissioner Hsu indicated that the $750,000 to prep the pad to make the pad buildable is an offset against the rent that the Port is willing to agree to. Eventually, it comes out of

the Port's pocket to pay for that. He finds cost of living increases to be quite common in restaurant leases. Besides we do have a ceiling and floor mechanism of not less than 10% and not more than 20% for each five year period. It's only fair that the Port receives its fair share of the fair market value of the land. When the developer enters into lease agreement with the subsequent two restaurants or one operator that will operate both restaurants, the developer would probably have built-in mechanism for cost of living adjustments.

Mr. Chapman indicated that is not the case. In their negotiations with restaurant operators, they have been unable to achieve annual cost of living increases. In today's market, the restaurant operations are insisting on flat rents for five years and very high tenant improvement allowances. They have not been able to achieve annual cost of living increases in restaurant leases. He does not believe that is the market based on several other transactions they have looked at. Today, because of the problems with the economy, they're unwilling for five years to agree to annual increases because they worry about whether their business is going to make it.

Commissioner Hsu indicated that he recognizes that problem but he is willing to concede with five years instead of an annual adjustment. Every five years, a fair market value appraisal will be done.

Mr. Chapman indicated that they have agreed to adjust the cost of living every five years. If the Commissioner is proposing to do a complete reappraisal based on the economy, the will be imposing the same problem on the restaurant operator. He does not believe that a restaurant operator would agree to the potential 25 or 30% increase in their rent five years from now.

Commissioner Hsu indicated that the developer agreed to a flat five-year rent when they sign a restaurateur today. Mr. Chapman replied affirmatively and added that they want to know what their maximum upside is at the end of year five and ten so there is a floor/ceiling mechanism that is common in the industry. It was his understanding that rather than the floor/ceiling they have agreed to, the Commissioner is suggesting that there be a reappraisal and the whole issue be reopened through an appraisal process that could result in a 50% increase in rent. No restaurant operator would agree to that.

Commissioner Hsu indicated that the rent structure that Mr. Bennett presented to the Commission was that for the first five years, the Port will get an increase of not less than 10% and not more than 20%. After that, it will be adjusted to fair market value every ten years. He is suggesting that we keep that structure going forward. We will adjust to fair market value but there will be a floor of not less than 10% and not more than 20% increase every five years and we look at it every five years instead of every ten years. He suggested that we keep the same model for the first five years and duplicate it for the rest of the term.

Mr. Chapman was concerned that they will not get a restaurant operator to agree to those terms. They could agree to it but the restaurants would never be built because they couldn't turn around and sublease it to an operator that would agree to those terms because of the uncertainty of what the rent would be with the investment they have to

make. They have tried to structure their proposal based on market conditions. Staff has attempted to verify the fact that these conditions are prevalent in most Northern California communities.

Mr. Bennett indicated that what Commissioner Hsu is describing is a classic structure that the minimum rent is consistently going up at a cost of living versus a percentage rent and also get an adjustment to a fair market rent. Within that classical structure, it is rare to see participation rent in the net sale proceeds. For example, Francisco Bay office park, is a classic structure, but has no participation in the sale. Commissioner Hsu was concerned that the Port is starting out with a relationship in terms of receiving an income stream with our fair share of the land and it is possible that relationship of the total income stream could go down, as the property becomes more valuable. The desire is to make sure that the Port gets fair market value so that its portion of the income stream from the property remains at a percent approximation of the land relative to the total. Staff and the developer spent a lot of time negotiating that issue but was obviously not successful. It became very important to emphasize to have the fair market adjustment every ten years to catch up but it is also very important to recognize the fact that there are net proceeds. One of the problems of this project is that the land value is very high. The rent to the Port is about 32% of the rent that is received by the project. The more traditional structure tends to be when you have a large hotel or office building project where a land value is a relatively much smaller portion and there is not much risk to the developer being squeezed out. The Commissioner raised a valid issue. Staff analyzed this issue and realized that the initial land value to the total value of the land and improvements is about 32%. If the income goes up at a modest increase, that remains. If the income goes up spectacularly, we don't stay even and the Port's share could go down to a lower percent, in the mid 20's. However, if a sale takes place and our rent share of the total income stream goes down to 24%, that reflects a value when the developer sells, the Port gets 15%. When you add in those net sales proceeds and divide them by the years, it comes out to 32%, our share of the income stream. The fact of the net sale proceeds is very important because it is a significant opportunity for the Port to share in the profit. It does not squeeze the developer out of the project but if they are very successful and they sell the project, the Port will participate significantly, which gives a form of catch up if we fall behind in our fair share of the income stream.

Commissioner Hsu asked where the 32% of the rent revenue came from. Mr. Bennett replied that if you take the rent they are receiving around $600,000, the Port will receive about $200,000 (approximately 30%).

Commissioner Hsu indicated that is based on assumption. The 25% participation after the 15% annual preferred return might happen but to achieve it would not be easy. The 25% participation is predicated on whether and if it happens. As a public agency, the Port cannot wish for a windfall every 8 years or so. It's great to have windfall but we need the base revenue. That's what runs the agency and not the windfall that may or may not happen. He has a problem giving away base rent and income to a windfall that may not happen.

Mr. Bennett replied in their negotiations, they went from a classic structure standpoint, they wanted the annual cost of living all the way through the term and they wanted to have a fair market adjustment periodically versus the percentage rent. In a much larger project,

where the land is a smaller portion of the total value, we would have been successful. For this type of project where the land value is a very significant part of the project, they concluded that it's not a reasonable structure. The Port is nevertheless protected by the fact that the Port gets a percentage of their receipts. The base rent will be adjusted to fair market value periodically and it's not dependent upon the net sale proceeds. It is a form of assurance that the Port is participating fully in the reversion value of the land by providing the developer a longer term lease.

Commissioner Hardeman remarked that if the Commission accept Commissioner's Hsu's motion, the project is killed. The Commission should vote yes or no on the project because the amendment would kill the project.

Commissioner Hsu indicated that from what he understands from Mr. Chapman is that the initial five-year term would be a flat rent to the potential restaurateur. He asked if it gets adjusted after that time. Mr. Chapman confirmed that it gets adjusted. They have dealt with a number of potential restaurateurs as well as brokers that represent them. He does not think in this market that it is possible to have an open reset of the rent in year 5 or 6 and have people make the investment that would be required to build these restaurants. He believes that the market condition today for restaurants is that you enter into flat rents that's is adjusted in year 6 by CPI, it goes flat for another five years. It is then readjusted and they have agreed to pass that through the Port. Essentially, that the rent to the Port would be adjusted at the same time that the restaurateur pays more. They can't be in a position nor can their lenders be in a position where they are paying annual rents and expenses, but no monies are coming in. That would be a recipe for bankruptcy. They want this to be successful and they have tried to restructure it on a basis that would be successful.

Commissioner Hsu asked if the developer would accept the same adjustment as their tenants. Mr. Chapman confirmed that he could accept it but the tenants might not accept it. Ultimately, the rent they will pay the Port will come from the restaurateurs and the restaurateurs won't agree to those provisions in the current economy or current market conditions. They have proposed something to the Port that represents the current market.

Commissioner Hsu indicated that Mr. Chapman proposed a rent structure to the restaurateur tenants that would be reset at year 6 and 5 years subsequent to that. Mr. Chapman indicated that what they suggested was that the rents would be flat for five, adjusted at the end of five and would go another five and be adjusted again. That's what they tried to parallel with the Port.

Commissioner Hsu asked what happens after year 10. Mr. Chapman replied that after year 10, there is another reset. Eventually, on the same basis, you get to a point where there is a fair market appraisal of the land and the whole thing is reset. By then, the restaurants have either been successful or haven't and they could afford to pay a fair market rental based on the fair market of the Port land. They think that is reasonable and they put that into the project.

Commissioner Hsu indicated that's exactly what he's asking for to have the CPI adjustment every five years. Mr. Chapman confirmed that they have agreed to that. Commissioner Hsu indicated that the problem he has with that proposal is it goes away

and it will be readjusted every ten years after that. He would like to see the five year adjustment to happen throughout the term of the lease, not an annual adjustment. The five year adjustment is based on annual compound adjustment. Mr. Chapman indicated that they have agreed to it in year 5 and 10. The fair market reappraisal occurs after year 20, 30 and every renewal option. He asked Commissioner Hsu if he would like a CPI adjustment in year 15. Commissioner Hsu replied that he would like to see the adjustment every five years. He pointed out that the first few years is the most difficult.

Mr. Chapman concurred they have an agreement. Right now, they have a CPI adjustment after 5 and 10. Commissioner Hsu would like to see another one after year 15 with the reset of the fair market value in year 20, 25, 30, 35, 40, 45, 50, etc.

Mr. Bennett reiterated the amendment made that that there would be a cost of living adjustment in year 15, a fair market value on year 20 and five years later a cost of living adjustment above that adjustment and then a fair market adjustment five years later and continue on in that fashion. So we have both the fair market adjustment and the cost of living midpoint.

ACTION: Commissioner Hsu moved approval of the resolution as amended; Commissioner Alioto seconded the motion. All of the Commissioners were in favor. Resolution No. 03-40 was adopted.

6. NEW BUSINESS/PUBLIC COMMENT

Dana Lanza, Literacy for Environmental Justice, provided a status report regarding their work at Heron's Head Park, a 24-acre restored wetland in southeast San Francisco. It was at one point called Pier 98 and it was a landfill. During that time, teachers and students from the neighborhood began going to the site before it was restored to use as an outdoor classroom. The Port remediated the area into a wetland. Today, it is a site that is beloved by thousands of school children and people who live in the neighborhood. About two years ago, the Dept. of the Environment released a program with some PG&E mitigation money and the project had to focus on capital improvements project. They applied with the Port and with Vander and Architects to design the City's first off-the-grid greenhouse and classroom at the site. The site will be the first environmental education center in southeast San Francisco and it will use green energy and sustainable design methodologies and be a way for people to learn about these kinds of technologies. During the past two years, they have been doing a lot of community outreach and they have at least 30 community meetings, many of which were at the school site with teachers and youths. The building has been designed by teachers and youths from throughout the City but focused in southeast San Francisco. Overall, there has been about 400 students engaged in learning the project and designing elements of the project. They are very excited about the project and they are ready to move forward. She invited the Commission and the public to take a tour of the site. Heron's Head is the only park in San Francisco that uses no pesticides. It is solely maintained through volunteer efforts with some small help in landscaping.

Espanola Jackson, Bayview Hunter's Point, indicated that she heard about the Heron's Head Park last year. She spoke to Ms. Lanza and explained that it is a toxic site. In 1994, there was an agency to take over the PG&E plant. They tested that area because they had to be close to a PG&E plant in order to close down PG&E. They learned that was a toxic site and they couldn't

build anything there. She talked to Ms. Lanza because she's still persistent on having an open classroom on a toxic site. The majority of children at Bayview Hunters Point suffer from asthma. Across the street from the site is the PG&E plant which is a toxic site as well. She asked the Commission not to support their lease because of the health of the children at Bayview Hunter's Point.

Ernestine Weiss spoke about the Alioto lease and indicated that the Port was derelict in its duty to monitor the condition of the pier. She recommended that the Commission be mindful of its obligations. She also informed the Commission about her disappointment in the Commission's decision of placing the Yin and Yang sculpture at Ferry Park. She felt that the Port did not do enough outreach to the community, namely Rec & Park. She urged the Commission to reconsider its decision.

7. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Brandon moved approval; Commissioner Bierman seconded the motion. All of the Commissioners were in favor.

Commissioner Alioto was excused from executive session.

At 5:35 p.m., the Commission withdrew to executive session to discuss the following:

B. CLOSED SESSION

(1) Discussion of Executive Director's Compensation for Fiscal Year 2003/2004.

(2) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING AND ANTICIPATED LITIGATION MATTERS (Discussion Items)

a. Discuss existing litigation matter pursuant to Section (a) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (1 case):

- F. Alioto Company, Inc. et al. v. City & County of San Francisco, et al., Superior Court Petition CPF 03-503016.

b. Discuss significant exposure to litigation pursuant to subdivision (b) of California Government Code Section 54956.9 (1 case) (As Defendant and As Plaintiff)

(3) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.
This session is closed to any non-City/Port representative. *

a. Property: Piers 27-31
Person Negotiating: Port: Byron Rhett, Director of Planning & Development

*Piers 27-31 LLC: Steve Jacobsen

b. Property: Piers 26
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*International Museum of Women: Elizabeth Colton

c. Property: Piers 19/23
Person Negotiating: Port: Peter Dailey, Director of Maritime
*Big C Traders: Raymond Lynch

d. Property: Seawall Lot 349
Person Negotiating: Port: Ken Winters, Director of Real Estate
*PUC: Ed Smeloff

e. Property: Pier 33 South
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Kira Makagon: Kira Makagon

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f. Property: Heron's Head Park @ Pier 98
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Literacy for Environmental Justice: Dana Lanza

At 7:03 p.m., the Commission withdrew from executive session and reconvened in open session.

ACTION: Commissioner Brandon moved approval to adjourn executive session and reconvene in open session; Commissioner Hsu seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner Brandon moved approval not to discuss any items discussed in executive session; Commissioner Hsu seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner Brandon moved approval to adjourn the meeting; Commissioner Hsu seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 7:02 p.m.

DOCUMENTS DEPT.

JUN 19 2003

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SAN FRANCISCO
PORT COMMISSION

PLEASE NOTE THE TIME & LOCATION OF THE MEETING.

REGULAR MEETING
3:00 P.M., TUESDAY, JUNE 24, 2003
PORT COMMISSION ROOM, 2ND FLOOR
FERRY BUILDING, SAN FRANCISCO, CA 94111

The Port Commission Agenda as well as Staff Reports/Explanatory Documents available to the public and provided to the Commission are posted on the Port's Website at www.sfport.com.

AGENDA

1. **ROLL CALL**

2. **APPROVAL OF MINUTES** - June 12, 2003 Special Meeting

3. **EXECUTIVE**

   A. Executive Director's Report
   - New Port Commission Hearing Room
   - Commendation for former Commissioners Denise McCarthy and Brian McWilliams
   - July 4th Waterfront Celebration
   - Port Security Grant

4. **ADMINISTRATIVE SERVICES**

   A. Request for approval of the Executive Director's compensation for FY 2003/2004. (Resolution No. 03-41)

5. **REAL ESTATE**

   A. Request for approval of assignment of Lease No. L-10445 from Kira Makagon to San Francisco Pier 33, LLC, and approval of sublease between San Francisco Pier 33, Inc. and Leo Chowdhury. (Resolution No. 03-45)

6. **PLANNING & DEVELOPMENT**

   A. Request for approval of Exclusive Right to Negotiate Agreement with the International Museum of Women (IMOW) for the development and long-term lease of Pier 26 located on the Embarcadero between Harrison and Bryant Streets. (Resolution No. 03-42)

B. Request for approval of the Schematic Designs for James R. Herman International Cruise Terminal and Mixed Use Development located on Piers 30-32 and Condominium Project located on a portion on SWL 330, and Approval of a Consolidated Plan for SWL 330. (Resolution No. 03-43)

C. Approval of an Exchange of the Public Trust and Burton Act Trust that would remove the public trust and Burton Act trust from approximately 22,600 square feet of unimproved real property located at the intersection of Bryant and Beale Streets, being the westernmost corner of Seawall Lot 330, and would place the public trust and Burton Act trust on an approximately 10.34 acre site located between Maryland Street, Cesar Chavez Street, and 24th Street, on the eastern portion of the parcel commonly known as the Western Pacific parcel. (Resolution No. 03-44)

D. Informational Presentation by SF Piers 27-31, LLC ("Developer") on Revisions to the Preferred Alternative Project for the Piers 27-31 Mixed Use Recreation Project following State Lands Commission Action.

7. NEW BUSINESS/PUBLIC COMMENT

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. A member of the public has up to three minutes to make pertinent public comments before action is taken on any agenda item and during the new business/public comment period. It is strongly recommended that public comments be submitted in writing so they can be distributed to the Commissioners for their review. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

8. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING AND ANTICIPATED LITIGATION MATTERS (Discussion Items)

a. Discuss existing litigation matter pursuant to Section (a) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (1 case):

- F. Alioto Company, Inc. et al. v. City & County of San Francisco, et al., Superior Court Petition CPF 03-503016.

b. Discuss significant exposure to litigation pursuant to subdivision (b) of California Government Code Section 54956.9 (1 case) (As Defendant and As Plaintiff)

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.
This session is closed to any non-City/Port representative. *

a. Property: Pier 94 Intermodal Container Transfer Facility (ICTF)
Person Negotiating: Port: Peter Dailey, Director of Maritime
*LB Railco: David Gavrich

Under Negotiation: _____ Price ____ Terms of Payment _X_ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 94.

b. Property: Piers 19/23
Person Negotiating: Port: Peter Dailey, Director of Maritime
*Big C Traders: Raymond Lynch

Under Negotiation: _____ Price ____ Terms of Payment _X_ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 19/23.

c. Property: Pier 3, Pier 31-½, and Pier 33
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Hornblower Yachts, Inc.: Terry MacRae

Under Negotiation: _____ Price ____ Terms of Payment _X_ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 3, Pier 31-½, and Pier 33.

d. Property: Pier 96
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Sanitary Fill Company: Maurice Quillen

Under Negotiation: _____ Price ____ Terms of Payment _X_ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 96.

e. Property: Seawall Lot SWL 322-I
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Various RFP Respondents

Under Negotiation: _____ Price ____ Terms of Payment _X_ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at SWL 322-I.

f. Property: 1500 Sansome Street
Person Negotiating: Port: Ken Winters, Director of Real Estate

*Negotiator to be Determined

Under Negotiation: _____ Price ____ Terms of Payment _X_ Both
An executive session has been calendared to give direction to staff regarding proposed development at Port property located at 1500 Sansome Street.

g. Property: Pier 28– ½ Restaurant Opportunity Site
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Negotiator to be Determined

Under Negotiation: _____ Price ____ Terms of Payment _X_ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at 28-½.

h. Property: Heron's Head Park @ Pier 98
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Literacy for Environmental Justice: Dana Lanza

Under Negotiation: _____ Price ____ Terms of Payment _X_ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 98.

9. RECONVENE IN OPEN SESSION

A. Possible report on actions taken in closed session pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12

B. Vote in open session on whether to disclose any or executive session discussions pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

10. ADJOURNMENT

JUNE/JULY 2003
CALENDAR OF UPCOMING PORT MEETINGS - OPEN TO THE PUBLIC

Date	Time	Group	Location
June 24	**3:00 p.m.**	**Port Commission**	**Port Commission Room @ Ferry Building**
July 8	**3:00 p.m.**	**Port Commission**	**Port Commission Room @ Ferry Building**
July 22	**3:00 p.m.**	**Port Commission**	**Port Commission Room @ Ferry Building**

NOTES:
The San Francisco Port Commission meets regularly on the 2nd and 4th Tuesday of the month at 3:00 p.m., unless otherwise noticed. Effective June 24, 2003, the Port Commission meetings will be held in the Port Commission Room located on the second floor of the Ferry Building. Contact Amy Quesada at 274-0406. ***The Commission Agenda and staff reports are also posted on the Port's Website @ www.sfport.com.***

The Environmental Quality Advisory Committee (EQAC) meets regularly on the fourth Thursday of the month at 9:00 a.m. at Scoma's Restaurant, Pier 47 @ Fisherman's Wharf. Contact Jay Ach @ 274-0562.

The Fisherman's Wharf Waterfront Advisory Group meets regularly on the 3rd Tuesday of the month. The regular meeting time and place is 9:00 a.m. at Scoma's Restaurant, Pier 47 at Fisherman's Wharf. Contact Kirk Bennett @ 274-0545.

The Maritime Commerce Advisory Committee (MCAC) meets on a bi-monthly basis, on the third Thursday of the month, from 11:30 a.m. to 1:30 p.m. @ Pier 1. Contact Jill Rodby @ 274-0519.

The Mission Bay CAC meets regularly on the 2nd Thursday of the month, from 5:30 to 7:30 p.m. at the Mission Bay Visitor Center (255 Channel Street). Please contact Tiffany Bohee at 749-2481 for more information.

The Northeast Waterfront Advisory Group meets regularly on the 1st Wednesday of the month at 4:00 p.m. in the Bayside Conference Room @ Pier 1. Contact Kirk Bennett @ 274-0545.

The Pier 70 Advisory Group meets monthly on an as-needed basis generally on the 2nd Wednesday of the month from 4 to 6 p.m. at the Potrero Campus of the California College of Arts and Crafts, Board Room, 1111 – 8th Street between Irvin and Hooper. Contact Mark Paez @ 705-8674.

The Rincon Point-South Beach CAC meets regularly on the 3rd Monday of the month, from 5:00-7:00 p.m. at the South Beach Yacht Club (Pier 40 on The Embarcadero). Please contact Tiffany Bohee at 749-2481 or 749-2400 for more information.

The Southern Waterfront Advisory Committee (SWAC) meets every 1st Wednesday of the month from 6:15 to 8:15 p.m. Location to be determined. Contact David Beaupre @ 274-0539 or david_beaupre@sfport.com.

The Waterfront Design Advisory Committee meets the 3rd Tuesday of the month from 11 a.m. to 1 p.m. in the Bayside Conference Room @ Pier 1. Contact Dan Hodapp @ 274-0625.

Port Website: Check out the Port's Website at **www.sfport.com.**

ACCESSIBLE MEETING INFORMATION

Getting to Pier 1:
Pier 1 on the Embarcadero, at the foot of Washington St. The Embarcadero Station is the closest BART and MUNI Metro stop, located below Market St. at Drumm & Spear Streets. The nearest F-Line streetcar stop is on the Embarcadero at Washington St. MUNI bus lines serving the Pier 1 area are the 9, 31, 32 and 71. For more information about MUNI accessible services, call (415) 923-6142.

The nearest accessible parking is provided in the following off-street pay lots:
A) 1 space in the surface lot on the west side of the Embarcadero at Washington St.
B) 3 spaces in the Pier 1/2 lot, located on the east side of the Embarcadero between the Ferry Building and Pier 1. During business hours this lot is operated by valets
C) Hourly and valet parking in the Pier 3 lot. This lot is accessed through the Pier 3 bulkhead building entrance on the east side of the Embarcadero. This lot is located on the pier deck; adjacent to the ferry boat Santa Rosa.

Additional covered accessible off-street pay parking is available in the Golden Gateway Garage, which is bounded by Washington, Clay, Drumm and Battery Streets. Entrance is on Clay St. between Battery and Front Streets. There is no high-top van parking.

Metered street parking is available on the Embarcadero, Washington St. and Drumm St.

Pier 1:
The Port's fully accessible offices are in the west end of Pier 1. There are two public entrances; the main entrance on the west (Embarcadero), and the Port History walk entrance on the south apron. Each of these entrances is provided with an automatically operated door. Both entrances lead to the Commission Bayside meeting room. Accessible public restrooms, drinking fountains, payphone and TTY are on the first floor near the main entrance. The public spaces of the Port's offices are equipped with remote infrared signage (Talking Signs) identifying all primary entrances, paths of travel, meeting rooms and amenities. Accessible seating areas and assistive listening devices will be available in the Commission meeting room.

Accessible meeting information policy:
In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

A sign language interpreter and alternative format copies of meeting agendas and other materials can be provided upon request made at least 72 hours in advance of any scheduled meeting. Contact Nita Mizushima, Chief Harbor Engineer, at 274-0559. The Port's TTY number is (415) 274-0587.

Know Your Rights Under the Sunshine Ordinance. Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, please contact Donna Hall, Administrator at 554-7724; fax 554-5163; e-mail address Donna_Hall@ci.sf.ca.us; City Hall, Room 244, One Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Ordinance Task Force, the San Francisco Public Library and on the City's Website at www.ci.sf.ca.us/bdsupvrs/sunshine.

Lobbyist Registration and Reporting Requirements. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Government Conduct Code §2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness, Suite 3900, San Francisco, CA 94102, phone (415) 581-2300 or fax (415) 581-2317; web site: www.sfgov.org/ethics.

PORT OF SAN FRANCISCO

MEMORANDUM

June 16, 2003

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Susan Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval of 2003-2004 Executive Director Salary

DIRECTOR'S RECOMMENDATION: APPROVE THE 2003-2004 COMPENSATION FOR THE EXECUTIVE DIRECTOR

Charter Section B3.582 grants the Port Commission the exclusive authority to set the compensation of the Port Director. The Charter provides that the Director's compensation shall not exceed the prevailing salaries paid to those holding similar positions in comparable maritime employment.

In the past several years, annual changes to the compensation for the San Francisco Port Director were set in accordance with the terms and conditions of the collective bargaining agreement between the City and County of San Francisco and the Municipal Executives Association (MEA), the organization that represents managers throughout the City.

The contract negotiated between the City and MEA for a two-year term beginning July 1, 2003 provides for no salary increases for employees in Fiscal Year 2003-2004 and an agreement by employees to pay their own retirement contributions in an amount equal to 7.5% of covered gross salary during Fiscal Year 2003-2004. In prior years, the City had agreed to make all or part of the employee's contribution on behalf of its employees.

In return for the employee concessions, the City agreed to provide represented employees with an additional five (5) floating holidays for use in 2003-2004. All other provisions of the contract related to pay and benefits that are applicable to the San Francisco Port Director have remained the same as in the prior agreement.

This Print Covers Calendar Item No. 4A

The negotiated contract has a clause providing that either the City or MEA may reopen the agreement to discuss adjustments to wages and the retirement contribution. This reopener provision was inserted to address the uncertainty of the impact of the State of California budget and the local economic recovery on the City's budget.

In addition to MEA, all of the other employee organizations that represent City employees, and whose contracts were negotiated this spring, accepted the 7.5% employee pick-up of the retirement contribution and the same similar provisions as MEA.

Staff conducted a survey of the salaries to Port Directors in the seven major West Coast ports. It was determined that the final salary approved by your commission for the San Francisco Port Director in the current fiscal year (approximately $186,200) falls within the range of salaries paid by those ports.

Staff also surveyed the salaries paid to the directors of several related City departments, including the Airport, Public Utilities Commission, Department of Public Works, Chief Administrative Officer, and the Department of Transportation. The Port Director's 2002-2003 salary is approximately equal to the average of the salaries paid to directors of those departments.

Prepared by: Kathy Mallegni
Assistant Deputy Director, Human Resources

PORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 03-41

WHEREAS, section B3.581(h) of the Charter grants the Port Commission the exclusive authority to set the compensation (salary and benefits) of the Port Executive Director; and

WHEREAS, in the past several years, annual increases to the compensation and benefits for the Port Executive Director were set similarly to those of members of the Municipal Executives Association (MEA), as negotiated between the City and the MEA; and

WHEREAS, the City and the MEA have agreed that there would be no salary increase for Fiscal Year 2003-2004; and

WHEREAS, the membership of the MEA has agreed to fund 7.5% the retirement cost currently paid by the City during Fiscal Year 2003-2004; and

WHEREAS, in return for the employee concessions, the City agreed to provide represented employees with an additional five (5) floating holidays for use in 2003-2004; now, therefore be it

RESOLVED, that the compensation for the Port Executive Director for Fiscal Year 2003-2004 will be unchanged from the salary effective June 30, 2003; and, be it further

RESOLVED, that the Port Director will contribute to the Employees' Retirement System an amount equal to 7.5% of covered gross salary during Fiscal Year 2003-2004; and, be it further

RESOLVED, that the Port Director will receive five additional floating holidays for use during Fiscal Year 2003-2004; and, be it finally

RESOLVED, that the benefits provided to the Port Executive Director in Fiscal Year 2003-2004 will be the same as those provided to employees represented by the Municipal Executives Association in Fiscal Year 2003-2004.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of June 24, 2003.

_____

Secretary

PORT OF SAN FRANCISCO

MEMORANDUM

JUNE 18, 2003

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier, Commissioner
Hon. Sue Bierman, Commissioner
Hon. Wilfred Hsu, Commissioner

FROM: Douglas F. Wong
Executive Director

SUBJECT: APPROVAL OF LEASE ASSIGNMENT OF LEASE NO. L-10445 FROM KIRA MIKAGON TO SAN FRANCISCO PIER 33 LLC AND SUBSEQUENT SUBLEASE TO LEO CHOWDHURY FOR PORT PROPERTY LOCATED AT THE EMBARCADERO AND BAY STREET.

DIRECTOR'S RECOMMENDATION: APPROVE ASSIGNMENT AND SUBLEASE.

BACKGROUND:

In 1980, the Port Commission approved Lease No. L-10446 with Embarcadero Enterprises, Inc., a California corporation affecting the whole of Pier 33, South for a term of 30 years (Port Commission Resolution 80-83).

In 1983, the Port Commission approved an Assignment and Amendment to Lease No. L-10446, amending the terms of the lease and assigning Embarcadero Enterprises, Inc.'s interest to Pier 33, Incorporated, a California corporation. (Port Commission Resolution No. 83-30)

In 1984, the Port Commission approved Second Amendment to Lease No. L-10446 (Port Resolution 84-23) which amendment effected certain corrections to the lease and added certain provisions to the lease for the benefit of future lenders.

In 1995, the Port Commission approved a Third Amendment to Lease No. L-10446 (Port Resolution No. 95-14) which amendment further modified the terms of the lease for the benefit of a proposed lender and which amendment modified the lease percentage rent clause and granted to the Port a right to terminate the lease to effect a "Port Project". The modified Percentage Rent provision requires the tenant to pay to the Port 30% of all gross receipts from the facility subtenants in excess of $27,500.00 per month (annualized $330,000.00). To date, no percentage rent has been due or payable.

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On April 12, 2000, the Port Commission approved an Assignment of Lease No. L-10446 from Pier 33, Incorporated, a California corporation to Kira Makagon, an individual (Port Commission Resolution No. 00-46). That assignment required the Port Commission and the Board of Supervisors of the City and County of San Francisco to subsequently approve a Fourth Amendment to Lease.

On July 3, 2000, the Port Commission approved a Fourth Amendment which modified the Percentage Rent provisions of the lease requiring that the amount of any percentage rents payable for the previous year be used in a formula to reset the minimum rent obligation upwards in succeeding years, thereby protecting the Port from any cash flow loss resulting from an economic down turn.

The Fourth Amendment to Lease also incorporated the new City Requirements required of all new Port Leases (Non-Discrimination, Tropical Hardwood Ban, Pesticides Prohibition, Burma – Myanamar Business Prohibition and First Source Hiring).

The tenant is now approaching the Port and requesting an assignment of lease to an LLC and a subsequent sublease of a portion of the premises to a third party.

PROPOSED ASSIGNMENT AND SUBLEASE:

The Assignment:
In an effort to separate her personal affairs from her business affairs, the tenant proposes to assign the lease to an LLC. The proposed assignment does not personally release the tenant (Ms. Makagon) from liability and further, Makagon will be the majority holder in the LLC. As such, the Port is not impacted from the proposed assignment and would potentially benefit as the LLC would allow the business to continue uninterrupted in the event of Makagon's incapacitation.

The Sublease:
The tenant's lease requires the ground floor portion of the premises be operated as a restaurant. The prior restaurant, Whitehall Tavern, vacated in 2001. The tenant has completed negotiations with a new restaurant subtenant, Mr. Leo Chowdhury, who plans to re-open the site as an Indian restaurant. Mr. Chowdhury has operated three similarly themed restaurants in the United Kingdom over the past eight years. Mr. Chowdhury plans to minimally improve the site, self-financing approximately $50,000 over a 3 month construction period. The proposed sublease term is for 5 years and the sublease will help activate and energize this portion of the waterfront. Base Rent payable under the sublease will be $5,000 per month, which amount will be included in the Makagon's gross receipts from the entire premises for purposes of determining whether percentage rent is due to the Port.

Recommendation:
Port staff recommends approval of the proposed assignment and sublease to Lease No. L-10446.

Prepared by: Phil Williamson, Senior Property Manager

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 03-45

WHEREAS, Section B3.581 of the Charter of the City and County of San Francisco empowers the San Francisco Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port Jurisdiction; and

WHEREAS, Kira Makagon, the tenant under Port Lease No. L-10446, has requested a lease assignment to San Francisco Pier 33, LLC; and

WHEREAS, The proposed assignment does not release Ms. Makagon from her personal liability to uphold terms of the lease and Ms. Makagon will be the majority holder of the LLC; and

WHEREAS, Tenant has requested approval of a sublease for the ground floor portion of the premises to Mr. Leo Chowdhury; and

WHEREAS, Tenant's lease provides that Port shall not unreasonably withhold its consent to transfers of partial leasehold interests; and

WHEREAS, Port staff has reviewed and approved as to form the proposed assignment and sublease documents on terms and conditions consistent with those outlined in the Memorandum to the Port Commission for Agenda Item 5A of the Port Commission meeting on June 24, 2003, a copy of which is available for public inspection with the Port Commission Secretary; now therefore be it

RESOLVED, that the San Francisco Port Commission hereby approves the assignment and sublease to Lease No. L-10446 on the terms and conditions contained therein and as outlined in the Memorandum to the Port Commission on June 18, 2003 in substantially such form of such assignment and sublease to Lease No. L-10446 on file with the Port Commission Secretary; and be it further

RESOLVED, that the Port Commission authorizes and directs the Port Executive Director, to consent to the assignment and sublease to Lease No. L-10446 in such form as may be approved by the City Attorney.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of June 24, 2003.

_____
Secretary

PORT OF SAN FRANCISCO

MEMORANDUM

June 18, 2003

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Sue Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval of Exclusive Right to Negotiate Agreement with the International Museum of Women for the development and long-term lease of Pier 26 located on The Embarcadero between Harrison and Bryant Streets.

DIRECTOR'S RECOMMENDATION: Approve Exclusive Right to Negotiate agreement with the International Museum of Women for Pier 26.

I. Introduction

The International Museum of Women ("IMOW") plans to create a museum in San Francisco to exhibit the global history of women and to explore contemporary gender issues. IMOW has identified Pier 26 as its preferred site and is seeking a 66-year lease at Pier 26 for the construction and operation of the proposed museum, with the goal of opening the museum in 2008. On March 25, 2003, the Port Commission by Resolution 03-26 authorized Port staff to negotiate an Exclusive Right to Negotiate ("ERN") agreement with the IMOW for the development and long-term lease of Pier 26, subject to final approval of the fully negotiated ERN by the Port Commission.

The Port and IMOW have negotiated the form of the ERN, including terms and conditions for entering into exclusive negotiations for the proposed lease of Pier 26 as directed by the Commission, and performance benchmarks. A copy of the proposed ERN is on file with the Commission secretary. This memorandum summarizes the key terms of the ERN, and recommends that the Port Commission approve the proposed ERN.

This Print Covers Calendar Item No. 6A

OF SAN FRANCISCO
TEL 415.274.0400 FAX 415.274.0528 ADDRESS Pier 1

II. Background

Pier 26 is an approximately 157,000 square foot finger pier located directly beneath the Bay Bridge between Harrison and Bryant Streets on The Embarcadero, including a 121,000 square foot historic pier shed and bulkhead building. Currently, the Port leases space at Pier 26 to a number of small tenants (e.g. 50 SF to 8,200 SF) on a short-term basis, primarily for warehousing uses. Some of these tenants are maritime tenants.

In August 2001 the Board of Supervisors unanimously adopted Resolution 659-01 welcoming IMOW to San Francisco and encouraging the Port of San Francisco to negotiate with IMOW for the possible use of Pier 26, including developing mutually agreeable terms and conditions and performance benchmarks for the museum.

In February 2002, IMOW submitted a proposal to the Port for developing and operating its proposed museum at Pier 26, including a preliminary development concept, market study, and preliminary financial objectives. In September 2002, IMOW submitted additional information to the Port regarding its development team, project timeline, estimated development costs, fundraising strategy and financial analysis of the museum operation.

In October 2002, the Port undertook financial and engineering analysis of Pier 26 to better evaluate the cash-flow value of the pier as an interim-use warehouse facility. Subsequently, the Port staff and IMOW discussed certain terms and conditions that would be mutually agreeable for entering into exclusive negotiations for the proposed lease of Pier 26.

IMOW requested to be awarded the proposed lease as a sole-source contract. The City Administrative Code states that it is the policy of the Board of Supervisors, except where they find it impractical or infeasible, to approve only such proposed leases involving City property that have been awarded to the highest responsible bidders in accordance with the City's competitive bidding procedures. On March 18, 2003, the Board of Supervisors unanimously adopted a resolution exempting the potential lease of Pier 26 to the IMOW from the competitive bidding policy set forth in the City Administrative Code. This resolution states that if the Port and IMOW agree upon the form of a lease for Pier 26, the Board would not disapprove of such a lease solely on the basis that it does not satisfy the competitive bidding policy.

On March 25, 2003, the Port Commission reviewed a staff summary and analysis of the IMOW proposal, including a number of negotiated terms and conditions that would be mutually agreeable for entering into exclusive negotiations for the proposed lease of Pier 26. These terms are summarized in Attachment 1 ("Term Sheet") and are included in the ERN as the basis for negotiating the development agreement and lease.

III. Summary of ERN

As directed by the Port Commission on March 25, 2003, the ERN reflects the terms and conditions stipulated in the Term Sheet, including the following:

- An ERN term of 2-years, which may be extended by one year at no cost to IMOW, if additional time is needed to meet performance benchmarks that have not been satisfied through no fault of IMOW

- To the extent IMOW chooses or is required to obtain legislative authorization regarding the Project's trust consistency and the Port participates in such legislative process, IMOW shall pay for all reasonable Port costs incurred by the Port in such legislative process.

The Term Sheet provision for payment of an ERN fee has been modified since March 25, 2003 as follows: A non-refundable ERN fee of $100,000 shall be payable in installments as follows: $50,000 upon execution of the ERN; $25,000 twelve months after the commencement date of the ERN; and $25,000 eighteen months after the commencement date of the ERN. In the event of early termination of the ERN, the Port shall waive and IMOW shall not be required to pay to the Port any ERN fee installment amounts not yet due as of such early termination date; provided, however, that any installment amounts due but not yet paid by IMOW as of such early termination date shall still be owed and payable by IMOW.

Further, to ensure that the Project is pursued diligently and efficiently by IMOW, the Port staff and IMOW have negotiated performance benchmarks for certain obligations, as outlined in Attachment 2 ("Performance Benchmarks"). IMOW is required to timely satisfy the Performance Benchmarks, along with all other provisions of the ERN, and failure to do so becomes an Event of Default under the ERN. The ERN stipulates standard notice, cure and remedy provisions for such events of default.

A key concept reflected in the ERN, including the Performance Benchmarks, is IMOW's obligation to timely obtain public trust consistency approval for the project. Performance Benchmark #4, for example, requires IMOW to engage in, no later than February 1, 2004, a process for early determination of public trust consistency for the Project, including regular discussions with the staffs of the San Francisco Bay Conservation and Development Commission ("BCDC") and State Lands Commission ("SLC") regarding the trust consistency elements of the Project. Under Performance Benchmark #5, IMOW must submit by July 1, 2004, a report on its progress towards the determination of public trust consistency, and other materials sufficient for Port staff to seek Port Commission direction regarding the development program and related trust issues. If the Port Commission's direction is that IMOW has not made sufficient progress in satisfying its public trust obligations, IMOW may submit additional information within 60 days for further direction from the Port Commission. If the Port Commission concludes IMOW has still not made sufficient progress, it may in its sole discretion direct staff to cease further efforts (except for Port cooperation on IMOW's public trust efforts) on the Project pending further direction.

The Performance Benchmarks also require IMOW to meet specific fundraising milestones throughout the ERN period to ensure a reasonable level of financial viability for the Project. As Attachment 2 indicates, IMOW must raise a total of $12 million by March 15, 2004 and a total of $24 million for the Project by June 15, 2005. However, the June 15, 2005 benchmark may be extended to a later date determined by the Port if IMOW is unable to raise such funds by June

15, 2005 due to a delay by IMOW in satisfying its public trust consistency obligations, provided that IMOW timely exercises its Option, and IMOW is not in default under the ERN as of June 15, 2005.

IV. RECOMMENDATION

Port staff recommends that the Port approve Resolution No. 03-42 authorizing the Executive Director to execute and enter into with IMOW the ERN in substantially the form on file with the Commission Secretary.

Prepared by: Kari D. Kilstrom, Project Manager

Attachment 1 – Term Sheet
Attachment 2 – Performance Benchmarks

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO 03-42

WHEREAS, Charter Section B3.581grants the Port Commission the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, Under Charter Section B3.581(g), leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, The Port owns that certain property known as Pier 26, located on The Embarcadero near the terminus of Bryant Street; and

WHEREAS, On August 13, 2001, the Board of Supervisors unanimously adopted Resolution 659-01 welcoming the International Museum of Women ("IMOW") to San Francisco and encouraging the Port of San Francisco to negotiate with IMOW for the possible use of Pier 26, including developing mutually agreeable terms and conditions including performance benchmarks for the museum; and

WHEREAS, Between February and September 2002, IMOW submitted information to the Port regarding its proposal for Pier 26, including a preliminary development concept, market study, preliminary financial objectives, development team, project timeline, estimated development cost, fundraising strategy and financial analysis of the museum operation; and

WHEREAS, On March 18, 2003, the Board of Supervisors unanimously adopted a resolution exempting the potential lease of Pier 26 to the IMOW from the competitive bidding policy set forth in the City Administrative Code, and stating that if the Port and IMOW agree upon the form of a lease for Pier 26, the Board would not disapprove of such a lease solely on the basis that it does not satisfy the competitive bidding policy; and

WHEREAS, The development concept proposed by IMOW, including the museum, related uses and increased public access to the pier, is generally consistent with the Waterfront Plan; and

WHEREAS, IMOW's development team has experience that is directly related to the planning, financial analysis, entitlement and rehabilitation and reuse of a historic pier facility in San Francisco; and

WHEREAS, On March 25, 2003 the Port Commission adopted Resolution 03-26 authorizing the Executive Director or his designee to negotiate an Exclusive Right to Negotiate Agreement ("ERN") with the International Museum of Women ("IMOW") for the development and long-term lease of Pier 26, provided that the Executive Director submit the form of the fully negotiated ERN, including performance benchmarks, to this Port Commission for its final review and approval; and

WHEREAS, Port staff has negotiated an ERN, with terms as described in the June 18, 2003 Memorandum for Resolution 03-42, a copy of which is on file with the Commission Secretary, and recommends that the Port Commission authorize the Executive Director to execute enter into the ERN with IMOW; NOW, THEREFORE BE IT,

RESOLVED, That the Port Commission hereby authorizes the Executive Director or his designee to execute and enter into with IMOW the ERN substantially in the form on file with the Commission Secretary, with any changes to such form ERN as shall be approved by the San Francisco City Attorney for the development and long-term lease of Pier 26.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of June 24, 2003.

_____

Secretary

ATTACHMENT 1

TERM SHEET

International Museum of Women ("IMOW")

Provision	Terms
Premises:	Pier 26, containing approximately 120,000 square feet on the ground floor of the existing building. Mezzanines may be added, increasing the overall square footage, at no increase in Base Rent.
Term:	66 years, commencing upon close of escrow.
Initial Base Rent:	$425,000 adjusted for cost of living increases between date of execution of a development agreement and commencement of rent.
Rent Credit:	No rent credits.
Sublease Income:	IMOW intends to develop income generating Sublease Space. Port shall participate in 50% of sublease income from Sublease Space, after first deducting the following: (1) sublease transaction costs, (2) amortization of direct tenant improvement costs for the Sublease Space beyond the base building costs, (3) $200,000 per year adjusted for cost of living as for Increase in Base Rent, and (4) pro-rated Base Rent less item (3), to Port allocated to Sublease Space.
Commencement of Rent:	Commencing upon the earlier to occur of: (1) opening of museum to the public; or (2) 18 months from commencement of term (close of escrow). No construction period rent prior to commencement of rent.
Increase in Base Rent:	Cost of living increases every 5 years, not less than 10% or more than 20%. Base index for calculation of cost of living increase shall be for month prior to execution of development agreement.
Percentage Rent:	Percentage Rent (offset by Base Rent) of Lessee's gross receipts from on-site operations, such as admissions, merchandise, food and beverage sales, event rentals, and third-party special events, but excluding sublease rent, IMOW fundraising events, grants and donations. Years 1-5: 3% Years 6-25: 4% Years 25+: 5%
Use of Premises:	Construction and operation of a world-class museum called IMOW and public access areas and complimentary, compatible income-generating uses, such as general office, retail and conference space.

Provision	Terms
Expenses:	Utilities. Lessee shall install, connect, maintain, repair and pay charges incurred for all utilities. Port shall cooperate in providing utility connections to the Premises. Insurance. Lessee shall carry general liability insurance reasonably agreeable to both parties and other customary insurance. Taxes. Lessee shall be subject to and responsible for all city, state and federal taxes applicable to the Premises and Lessee's operations.
Maintenance:	Lessee's maintenance responsibilities shall include the pier substructure. Lessee shall make annual contributions to a Substructure Reserve Fund to fund required maintain and repairs to the pier substructure. Every five years during the term, Lessee shall perform inspections of the pier substructure, and shall establish a budget and schedule for making required maintenance and repairs to the pier substructure. Every five years, the annual contribution to Substructure Reserve Fund shall be reset for the following five years to adequate funding for agreed upon budget and schedule. Tenant shall have the right to terminate the lease in the event that, during the last 11 years of the term, either (1) the required annual contributions to the Substructure Reserve Fund exceed the annual contributions to the Substructure Reserve Fund during the previous 5-year period; or (2) required repairs exceed the balance in the Substructure Reserve Fund.
Exclusive Negotiation:	A non-refundable ERN fee of $100,000 shall be payable in installments as follows: $50,000 upon execution of the ERN; $25,000 twelve months after the commencement date of the ERN; and $25,000 eighteen months after the commencement date of the ERN. In the event of early termination of the ERN, the Port shall waive and IMOW shall not be required to pay to the Port any ERN fee installment amounts not yet due as of such early termination date; provided, however, that any installment amounts due but not yet paid by IMOW as of such early termination date shall still be owed and payable by IMOW. The ERN shall have a term of two years, which may be extended by one year at no cost to IMOW, should performance benchmarks not be met through no fault of IMOW. Port costs related to adoption of state legislation, including but not limited to staff time, consultant and legal fees, shall be paid by IMOW if BCDC and the State Lands Commission Executive Director do not both concur that the development is consistent with the Public Trust Doctrine and the Port's legislative trust grant (the Burton Act) and, as a result, adoption of legislation is required.
Assignment / Transfers:	Assignment of lease shall be permitted. All revenue from transfer, less IMOW's cost of development, shall belong to Port except transfers to another non-profit organization with no change in use of premises. Assignment shall be subject to the consent of the Port. Such consent shall not to be unreasonably withheld.

Provision	Terms
Relocation Costs:	Lessee responsible for reimbursing Port for costs to relocate existing tenants in Pier 26, with a cap on the total reimbursement, which shall be included in any lease disposition and development agreement.
Historic Tax Credits:	Retained by Lessee.
Completion Guarantees:	As a condition to closing escrow, secure commitments from funding sources and adequate security from participants to cover cost over-runs and initial operating loses.
Performance Benchmarks:	To be negotiated prior to ERN execution.

Note: The above is not intended to be, and will not become, contractually binding and no legally binding obligations will exist unless and until the parties are able and willing to negotiate, execute and deliver mutually acceptable development agreement, lease and related transaction documents regarding the contemplated project. In addition, under San Francisco Charter, no officer or employee of the City and County of San Francisco ("City") has authority to commit the City to the transaction contemplated hereby unless and until an appropriate resolution of the San Francisco Port Commission and the San Francisco Board of Supervisors has been duly passed approving the transaction.

ATTACHMENT 2

PERFORMANCE BENCHMARKS

[All capitalized terms shall have the meaning given to them in the ERN]

Benchmark	Time for Performance
Due Diligence Work and Program/Team Development	
1. IMOW will perform due diligence investigation of the Site, including, without limitation, surveys, title, field measurements, structural analyses and inspections, historic building surveys and documentation, hazardous materials surveys, utility availability, and such other investigations as may be required by good engineering practices and by various regulatory agencies having jurisdiction with respect to the Project.	Preliminary drafts of the specified reports due on November 1, 2003, with due diligence to be substantially completed by January 1, 2004 and thereafter to be diligently pursued and completed as necessary during the Original Term
2. IMOW will submit to Port for its review and information a revised development program (consisting of, at a minimum, use descriptions, square footage allocations) and a revised conceptual plan that meets the parameters set forth in the Term Sheet; updated development cost estimates; and updated cash flow projections.	February 1, 2004
3. IMOW will submit to the Port a list of new members to be added to the development team, including a Project architect, along with evidence that such members are experienced in the development process and have a proven track record for developing properties in a complicated regulatory and entitlement environment.	April 1, 2004
Trust Consistency Review and Determination	
4. IMOW, accompanied by Port staff, will engage in process for early determination of public trust consistency including regular discussions with the staffs of BCDC and SLC regarding the trust consistency elements of the Project.	Commencing no later than February 1, 2004
5. IMOW will submit sufficient design, programmatic, and financial details of the Project to enable the Port staff to seek direction from the Port Commission as set forth in ERN Section 6(c), including a revised development program and conceptual plan if necessary to be responsive to the comments received in the process described in Performance Benchmark #4, that consists of the same components described in Performance Benchmark #2. Concurrently, IMOW will submit a report on its progress towards obtaining consistency of	July 1, 2004

the Project with the Burton Act legislative trust grant and the common law public trust doctrine as outlined in Section 6(a) and next steps, if necessary, toward achieving trust consistency.

Other Regulatory Approvals

6. IMOW will submit schematic design drawings of the Project to Port for review and, to the extent requested by Port, IMOW will initiate schematic design review of the Project with the Waterfront Design Advisory Committee and/or BCDC Design Review Board, for early input on public access and other design requirements of the Project.	No earlier than completion of process described in ERN Section 6, but no later than September 15, 2004
7. IMOW will submit a complete application to MEA for environmental review of the Project and will diligently cooperate with MEA in the completion of such review.	Later to occur of satisfaction date of ERN Section 6 or November 1, 2004

Fundraising

8. IMOW will provided evidence to the Port that it has secured the funds (including pledges) necessary to satisfy its obligations under the ERN in accordance with the following milestones:

• $1.6 million	March 15, 2004
• $6 million	By August 15, 2004
• $12 million	By March 15, 2005
• $24 million	June 15, 2005

(Above totals are cumulative and thus, by June 15, 2005, the total should be $24 million.)

PORT OF SAN FRANCISCO

MEMORANDUM

June 18, 2003

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Sue Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval of Schematic Designs for James R. Herman International Cruise Terminal and Mixed Use Development located on Piers 30-32 and Condominium Project located on a portion on SWL 330 at Bryant and Beale Streets.

DIRECTOR'S RECOMMENDATION: APPROVE SCHEMATIC DESIGNS FOR THE CRUISE TERMINAL AND MIXED USE PROJECT ON PIER 30-32 AND CONDOMINIUM PROJECT ON SWL 330

BACKGROUND

In January 2000, the Port Commission entered into exclusive negotiations with the San Francisco Cruise Terminal LLC ("SFCT") for the proposed development of a new international cruise terminal and mixed-use development at Piers 30-32 and Seawall Lot 330. In 2001, the Port obtained State Legislation, known as AB 1389, that authorized the proposed development program on Pier 30-32.

The Planning Department commenced environmental review of this project in late 2000 and the draft Supplemental Environmental Impact Report (SEIR) was published in November 2001. The Planning Commission certified the SEIR in May 2002. It was appealed to the Board of Supervisors, and the Board remanded the SEIR to the Planning Department. The SEIR was revised and the Planning Commission certified the SEIR in November 2002. It was appealed a second time, and the Board of Supervisors rejected that appeal in January 2003.

On March 25, 2003, the Port Commission approved the transaction documents in connection with the development of a cruise terminal and mixed use development, the sale of property on a portion of SWL 330 for development of a condominium project, and development of a public

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open space project referred to as the Brannan Street Wharf in the location of Piers 34 and 36. This public-private partnership with SFCT represents over $114 million of public improvements, including $57 million of Pier 30-32 seismic upgrades, $42 million for the cruise terminal, and $15 million for the Brannan Street Wharf.

This transaction contemplates a two-phased project. If certain conditions as stated in the transaction documents are met by SFCT, the Port would sell a portion of SWL 330 to SFCT for construction of a condominium tower, and the Port would participate in the sales proceeds from individual condominium units to be used for Pier 30-32. SFCT anticipates that construction would start in late 2003 or early 2004 and would be completed by mid-2005. In the second phase, SFCT would start construction on Pier 30-32 no later than mid-2006 (with two possible one-year extensions) and completed within three years.

The Purchase and Sale Agreement and Lease must be approved by the Board of Supervisors which is expected to occur next month. Other project-related discretionary approvals are required to be made by the Bay Conservation and Development Commission, State Lands Commission and the Planning Commission within the next few months.

Port Commission approval of the Schematic Drawings for the condominium project on SWL 330 and the Cruise Terminal Project at Pier 30-32 is a condition precedent to the Port's obligation to sell the condominium site to SFCT. The Schematic Drawings, as approved by the Port, will form the basis for the Developer's future submittals of Preliminary and Final Construction Drawings for approval by Port staff. Any material changes that the Executive Director determines are inconsistent with the approved Schematic Drawings will be brought back before the Port Commission for its approval. It is also important to note also that the Sale Agreement and Lease Disposition and Development Agreement provide that the Port staff may not disapprove subsequent construction drawings or require future changes therein in a manner that is inconsistent with the Schematic Drawings approved by the Port Commission.

SUMMARY OF PROPOSED SCHEMATIC DESIGN

The following discussion sets forth a summary of the Schematic Drawings for the Cruise Terminal and mixed use Project on Pier 30-32 and Condominium Project.

I. Cruise Terminal and Mixed Use Project on Pier 30-32

SFCT presented conceptual plans of Pier 30-32 to the Waterfront Design Advisory Committee ("WDAC") on March 21, 2000, March 20, 2001, May 15, 2001, December 9, 2002, February 10, 2003, April 7, 2003, and June 16, 2003. These meetings were held jointly with the BCDC Design Review Board. SFCT also presented concept plans to the Port Commission on March 13, 2001. Based on input from the WDAC, the Port, BCDC, and other regulatory and community groups, SFCT has continued to refine the Cruise Terminal Project to develop Schematic Drawings. At the June 16, meeting, the WDAC recommended approval of the schematic design of the Cruise Terminal and mixed use Project on Pier 30-32. The Schematic Drawings, identified as "Bryant Street Pier," are attached hereto as Attachment A, and are on file with the Secretary of the Port Commission for this item.

The proposed Bryant Street Pier project is a mixed-use project, which includes the James R. Herman International Cruise Terminal on Pier 30-32. The pier site is approximately 11 acres in size. In accordance with AB 1389 and consistent with the FSEIR, the proposed program of pier-side uses is as follows:

Cruise Terminal:	100,000 gross sq.ft
Retail:	180,000 gross sq.ft.
Outdoor Public Space:	230,000 gross sq.ft
Office:	370,000 gross sq.ft
Parking:	425 parking spaces

To accommodate the proposed mix of uses, the existing pier would require a partial reconfiguration and structural upgrade. A lagoon would be cut out of the pier to create an open water attraction for the retail and open space uses and there would be recreational boat berthing along the south side of the pier.

Following is a description of the main project elements:

James R. Herman Cruise Terminal – The proposed terminal is a two-level structure proposed at the northeast corner of the pier. Passengers would embark, disembark, be ticketed and check baggage from this facility. Two berths would be created, one on the east side at approximately 1000-foot length and one on the north at approximately 850-foot length. Passengers would enter on the first level from the lagoon area via an atrium on the building's southern side; they would then take escalators to the second level for ticketing and boarding. The terminal's ground level would be devoted primarily to terminal operations and ship servicing, while the second floor would function as the primary public space. When the cruise terminal is not in operation some of the space would be available for special events.

It is important to note that under the Lease Disposition and Development Agreement with SFCT, a condition precedent to the Port's obligation to deliver the lease for Pier 30-32 will be the Port's review of the Cruise Terminal design and operations plan with the Developer, in consultation with the Federal Inspections Service (including the Coast Guard), and the Port shall have received assurances from FIS reasonably satisfactory to Port that the proposed Cruise Terminal will meet applicable federal requirements. The proposed Resolution makes is clear that the Port Commission's adoption of the Schematic Drawings by this Resolution remains subject to the Port's future ability to review the Cruise Terminal Design and operations plan with SFCT, in consultation with the Federal Inspections Service (including the Coast Guard), as more particularly provided under the Lease Disposition and Development Agreement.

Retail and Entertainment – The project would include a grocery store and neighborhood serving retail, multiple restaurants, a multi-screen cinema, and a variety of other retail uses. The retail uses would largely be on the ground floor, and be focused around the lagoon and along the Embarcadero.

Open Space/Public Access – The projects open spaces would include the following components:

- Lagoon – the water basin within the pier and the surrounding walkway. There would also be a stepped-down edge to allow small craft access.
- Promenade - a large public walkway orientated to the south with pedestrian amenities and landscaping following the alignment of Brannan Street, and a triangular plaza that steps down from the Promenade about midway along its length.
- Eastern and Northern Aprons – these are the working aprons of the pier, where the architectural character would be derived from the functions of the cruise terminal. The aprons would be used to service cruise ships when in port and open to the public at other times.
- Pier Extension – the extension at the south east corner of the pier for cruise ship berthing.
- Second-level Terraces – three terraces, one on either side of the terminal building and a third in the general alignment of the Spear Street corridor. All three terraces connect the inner lagoon with the outside edges of the pier.

Commercial Office – located on the second and third levels including the terminal building.

Parking and Circulation - Vehicular access would be from the northwest corner of the site at Bryant Street. The parking would be in a four-story, 425-space structure separated from the Embarcadero Promenade by a layer of commercial space. Cruise terminal taxi drop-off and bus service would be further eastward, next to the cruise terminal facility.

II. Condominium Project on SWL 330

On March 21, 2000, SFCT presented an initial concept plan for the entire SWL 330 to the WDAC and, on March 20, 2001, they presented a revised concept design. SFCT also presented concept plans to the Port Commission on March 13, 2001. Based on input from the WDAC, the Port, and other regulatory and community groups, SFCT has continued to refine the Condominium Project to develop Schematic Drawings. On March 12, April 7, May 20 and June18 2003, the WDAC reviewed these Schematic Drawings, and on June 18, the WDAC recommended approval of the Schematic Drawings with no recommendation as to the arrangement of uses within the podium level of the residential structure. The Schematic Drawings, identified as "Bryant Street Seawall", are attached hereto as Attachment B, and are on file with the Secretary of the Port Commission for this item. These Schematic Drawings, and in particular the uses within the podium level, will be further reviewed by the Planning Department and the Planning Commission as part of the Conditional Use Application processes. The Planning Commission is scheduled to consider these actions on July 24, 2003.
The proposed Condominium Project is located on Seawall Lot 330, which is bounded by the Embarcadero, Bryant Street and Beale Street. The condominium site is approximately 22,600 square feet located in the corner of the Seawall Lot at the intersection of Bryant and Beale Streets. SWL 330 contains a total of 123,956 square feet and the remainder of the site is not part of this project but will be brought forward by the Port at a later date. The project consists of a single tower that would contain 135 – 145 residential units and parking at a ratio of one space per unit. The building is proposed to be 220-feet in height with mechanical plant above.

The first three levels of the building would be a combination of lobby, parking and residential. The main entrance through the lobby would be at the corner of Bryant and Beale Streets and would be a two-level height at this corner. Residential space would occur along the first three levels of the street facades, mostly with two-level units of which some would have individual street entrances, others of which would connect through the interior. Parking and loading access would be from Beale Street. The Condominium Project also includes a concierge, gym, swimming pool, and communal open space on the podium. The majority of the Condominium Project would be two-bedroom units with some one and three bedrooms. Most units would have balconies.

The intent of the tower design is to have it appear slender at its upper stories. The following describes the size of the floor plates:

- The podium level is three stories tall and approximately 22,600 square feet each level;
- Level 4 is approximately 12,500 square feet;
- Levels 5 through 11 are approximately 10,400 square feet;
- Levels 12 through 16 are approximately 9,700 square feet; and
- Levels 17 through 22 are approximately 9,100 square feet.

III. Brannan Street Wharf

Concept plans for the Brannan Street Wharf project will be presented to the Port Commission later this summer.

RECOMMENDATIONS

The WDAC has reviewed and recommended approval of the schematic drawings , with no recommendation as to the arrangement of uses within the podium of the condominium project. Staff therefore recommends approval of schematic drawings for the James R. Herman Cruise Terminal and mixed-use project at Pier 30-32 and the condominium project on a portion of SWL 330, with the understanding that the uses on the podium of the condominium project podium will be reviewed by the Planning Department and Planning Commission as part of the Conditional Use Permit process

Prepared by: John Doll
Project Manager
Planning & Development Division

Attachment A: Bryant Street Pier, The Jerde Partnership International, Skidmore Owens & Merrill, LLP & EDAW

Attachment B: Bryant Street Seawall, Moore Ruble Yudell Architects

PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO

RESOLUTION NO. 03-43

WHEREAS, on May 25, 1999 the Commission approved Resolution No. 99-36, authorizing Port staff to issue a Request for Qualifications and Proposals for the Bryant Street Pier Project ("Cruise Terminal Project"), in order to assess the availability of private investment to achieve its development objectives and determine and level of interest in the private sector; and

WHEREAS, on January 11, 2000 the Commission approved Resolution No. 00-03, awarding San Francisco Cruise Terminal LLC ("SFCT") the opportunity to enter into an Exclusive Right to Negotiate agreement; and

WHEREAS, on March 25, 2003, by Resolution No. 03-28, the Port Commission approved a Purchase and Sale Agreement, a Lease Disposition and Development Agreement, a Lease, and related actions, relating to the development of a mixed-use Cruise Terminal project at Pier 30-32, the development of the Brannan Street Wharf, and the sale to SFCT of an approximately 22,000 square foot parcel located at Seawall Lot 330 for development of a condominium project; and

WHEREAS, in connection with its approvals under Resolution No. 03-28, the Port Commission reviewed and considered the Revised FSEIR and the Waterfront Plan Final EIR (as those terms are defined in Port Commission Resolution No. 03-27), and, by Resolution No. 03-27, adopted CEQA Findings, including a statement of overriding considerations, attached to Resolution No. 03-27 as Attachment A, and its Exhibits 1 and 2, which CEQA Findings are incorporated herein by this reference; and

WHEREAS, since March 25, 2003, the parties have agreed upon a more precise description of the condominium site as being an approximately 22,600 square foot parcel (the "Condo Site"); and

WHEREAS, as described to the Port Commission at its March 25, 2003 meeting, the development of the James R. Herman International Cruise Terminal and mixed use project at Pier 30-32 (collectively, the "Cruise Terminal Project") and the development of the adjacent Brannan Street Wharf as a major shore-side open space is the culmination of a lengthy planning process for the San Francisco northeast waterfront; and

WHEREAS, the cruise terminal will provide a state-of-the-art facility to meet increased demand for cruise ships, enhance the Port's international reputation as a first class cruise destination, and preserve and create new maritime jobs on Pier 30-32 and throughout San Francisco's waterfront; and

WHEREAS, the Cruise Terminal Project will add significant new public access and viewing areas integrated into the commercial development component, the Brannan Street Wharf will provide a world-class open space for the community, the City and visitors to San Francisco, and development of the Condo Site for residential condominiums will finance these objectives while complementing the adjacent residential uses; and

WHEREAS, together all of these components will create a signature mixed-use waterfront project which achieves a high level of year-round public use and support and achieve a use and design program which respects and complements the existing South Beach neighborhood, uniting the City with its waterfront; and

WHEREAS, under the terms of a Purchase and Sale Agreement (the "Sale Agreement") approved by the Port Commission through Resolution No. 03-28, the Port would sell the Condo Site to SFCT for construction of a condominium tower, and the Port would participate in sales proceeds from individual condominium units, which funds would contribute towards SFCT's construction of the Brannan Street Wharf and development of the Cruise Terminal Project on Pier 30-32; and

WHEREAS, the Waterfront Design Advisory Committee ("WDAC") was established pursuant to Section 240 of the San Francisco Planning Code to review Major Projects on Port property and provide design recommendations to the Port, Planning Department and to the Bay Conservation and Development Commission ("BCDC") for projects within its jurisdiction; and

WHEREAS, the WDAC has reviewed concept and schematic designs for the Cruise Terminal Project in public sessions with the BCDC Design Review Board on March 21, 2000, March 20, 2001, May 15, 2001, December 9, 2002, February 10, 2003, April 7, 2003, and June 16, 2003; and

WHEREAS, the WDAC has reviewed concept and schematic designs for the Condominium Project in public sessions on March 21, 2000, March 20, 2001, March 12, 2003, April 7 2003, May 20 2003, and June, 18 2003; and

WHEREAS, the WDAC has been given copies of the FSEIR for its review and

WHEREAS, the WDAC voted to support the schematic design of Cruise Terminal Projcct on June 16, 2003; and

WHEREAS, the WDAC voted to support the schematic design of Condominium Projcct on June 18, 2003, with no recommendation as to arrangement of uses within the podium of the condominium project; and

WHEREAS, Port Commission approval of the Schematic Drawings for the Cruise Terminal Project at Pier 30-32 and the Condominium Project on SWL 330 are both conditions precedent to the Port's obligation to sell the condominium site to SFCT; now therefore, be it

RESOLVED, That the Port Commission has reviewed and considered the information contained in the Revised FSEIR and the Waterfront Plan Final EIR, and finds that for purposes of compliance with CEQA, the approval of the Schematic Drawings hereunder is part of the Cruise Terminal Project as that term is defined and examined in the Revised FSEIR and Waterfront Plan Final EIR for which the Port Commission, by Resolution No. 03-27, has adopted findings as required by CEQA, which findings are on file with the Secretary of the Port Commission under File No. 03-27, and which findings are incorporated herein by reference; and be it further

RESOLVED, That based on the foregoing, the Port Commission hereby finds that: (1) the approvals of the Schematic Drawings hereunder are within the scope of the Cruise Terminal Project as that term is defined and analyzed in the Revised FSEIR and the Waterfront Plan Final EIR and does not raise any important new issues about the significant effects on the environment not previously considered in the Revised FSEIR and the Waterfront Plan Final EIR; (2) no changes are proposed or have occurred in the Cruise Terminal Project that would require major revisions to the Revised FSEIR and the Waterfront Plan Final EIR due to the involvement of significant new environmental effects or a substantial increase in the severity of previously identified significant effects; (3) no substantial changes have occurred with respect to the circumstances under which the Cruise Terminal Project is being undertaken that would require major revisions to the Revised FSEIR and the Waterfront Plan Final EIR due to the involvement of significant new environmental effects or a substantial increase in the severity of previously identified significant effects; and (4) no new information of substantial importance has become available since the Revised FSEIR was certified indicating that: (a) the Cruise Terminal Project will have one or more significant effects not discussed in the Revised FSEIR and the Waterfront Plan Final EIR; (b) significant effects examined in the Revised FSEIR and the Waterfront Plan Final EIR would be substantially more severe; (c) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Cruise Terminal Project; or (d) mitigation measures or alternatives which are considerably different from those analyzed in the Revised FSEIR and the Waterfront Plan Final EIR would substantially reduce one or more significant effects on the environmental; and be it further

RESOLVED, that the Commission hereby approves the Schematic Drawings of the James R. Herman Cruise Terminal and Mixed-Use Project on Pier 30-32, identified as "Bryant Street Pier", dated June 16, 2003, a copy of which is on file with the Port Commission Secretary for this Item No. 6B, and authorizes the Executive Director to approve non-material changes in such Schematic Drawings in accordance with the terms of the Lease Disposition and Development Agreement and Purchase and Sale Agreement; and be it further

RESOLVED, that the Commission hereby approves the Schematic Drawings of the Condominium Project on a portion of SWL 330, identified as "Bryant Street Seawall," dated June 18, 2003, a copy of which is on file with the Port Commission Secretary for this Item No. 6B, and authorizes the Executive Director to approve non-material changes in such Schematic Drawings in accordance with the terms of the Purchase and Sale Agreement; and be it further

RESOLVED, that the Port Commission's adoption of the Schematic Drawings for the Cruise Terminal Project hereunder remains subject to the Port's future ability to review the Cruise Terminal Design and operations plan with SFCT, in consultation with the Federal Inspections Service (including the Coast Guard), as more particularly provided under the Lease Disposition and Development Agreement.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of June 24, 2003.

_____
Secretary

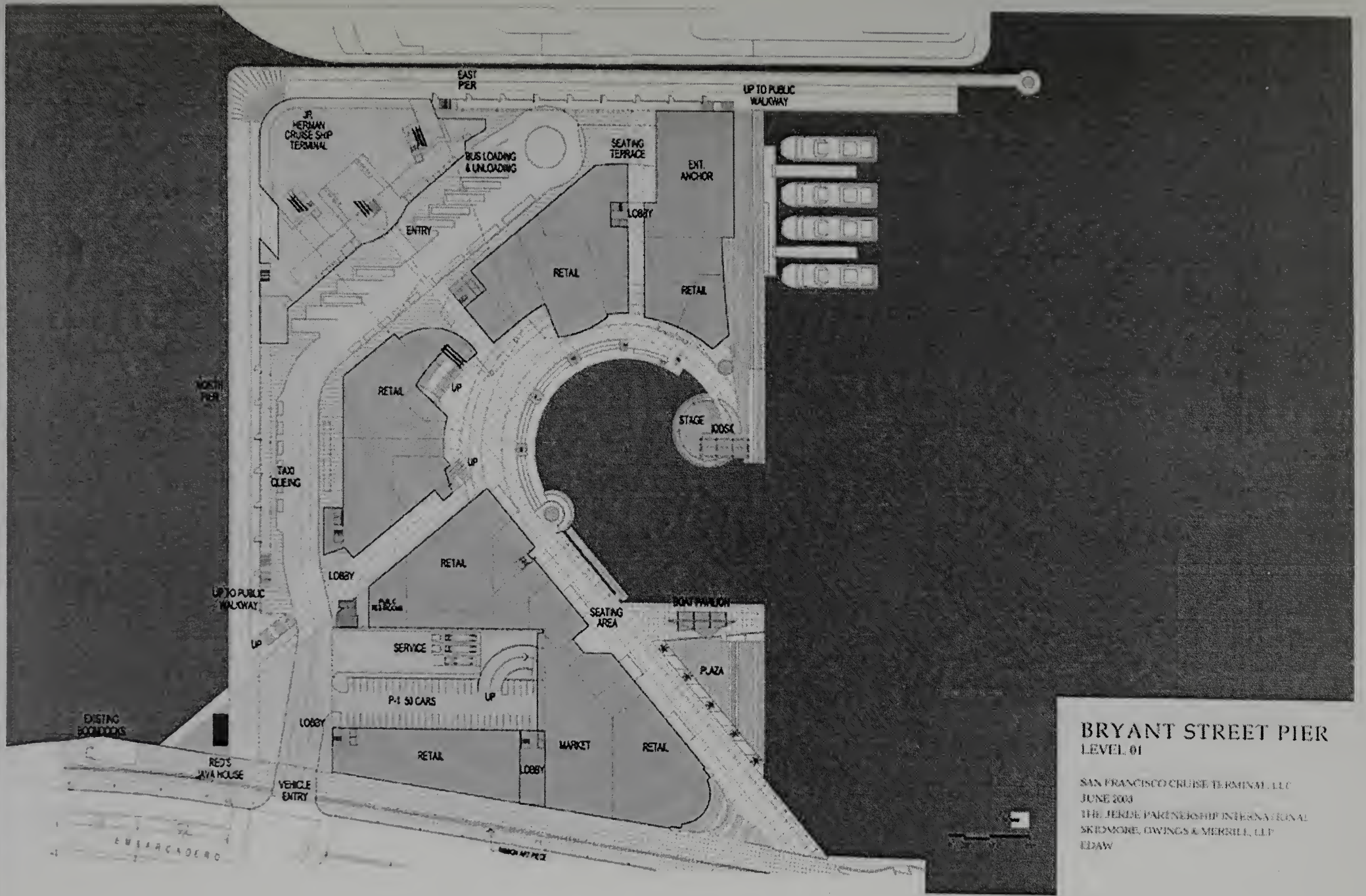
BRYANT STREET PIER

SAN FRANCISCO CRUISE TERMINAL, LLC
JUNE 2003
THE JERDE PARTNERSHIP INTERNATIONAL
SKIDMORE, OWINGS & MERRILL, LLP
EDAW

ATTACHMENT "A"

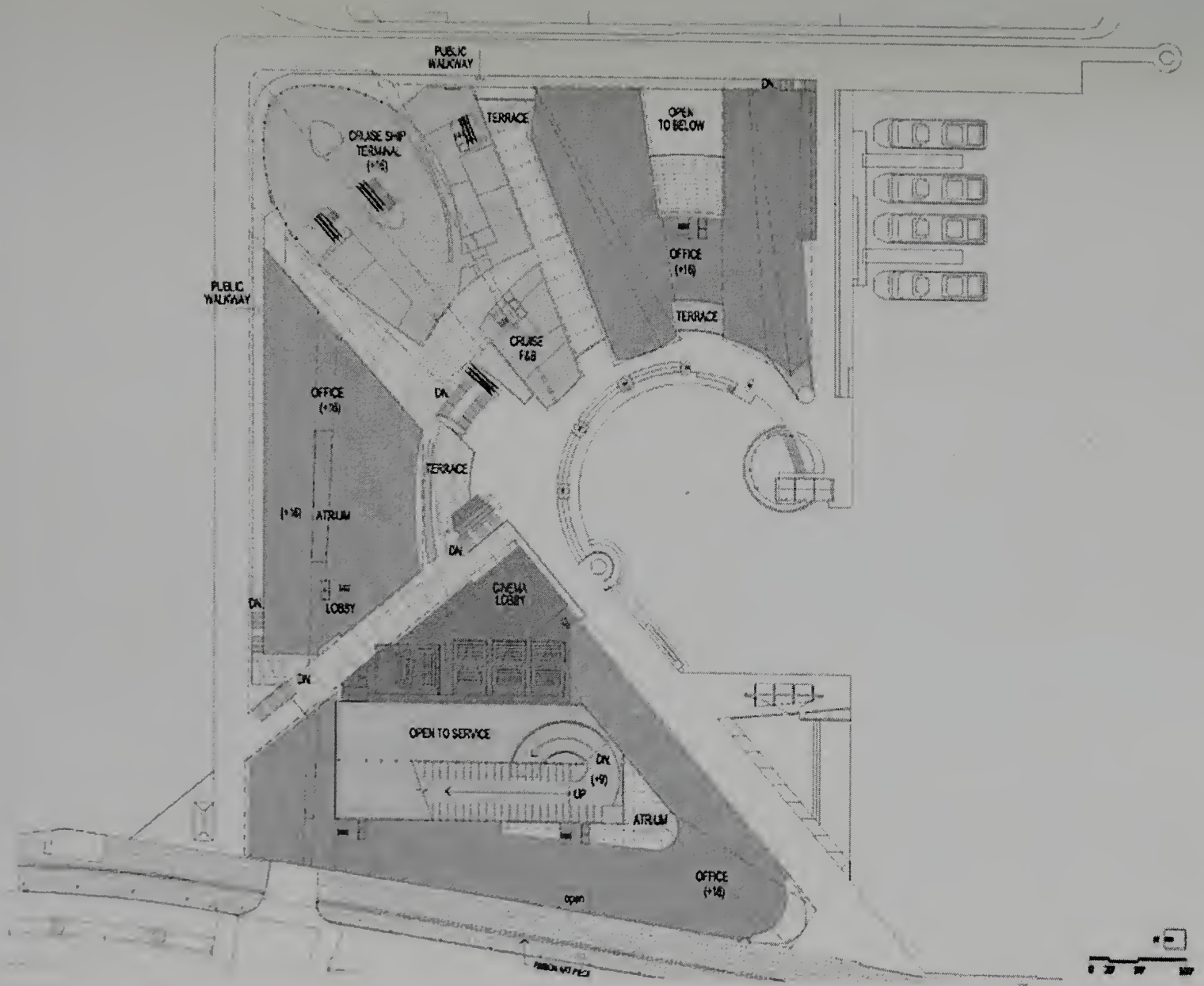
BRYANT STREET PIER
LEVEL 01
SAN FRANCISCO CRUISE TERMINAL, LLC
MAY 2003
SKIDMORE, OWINGS & MERRILL, LLP
EDAW

BRYANT STREET PIER
LEVEL 02
SAN FRANCISCO CRUISE TERMINAL, LLC
MAY 2011
THE JERDE PARTNERSHIP INTERNATIONAL
SKIDMORE, OWINGS & MERRILL, LLP
EDAW



BRYANT STREET PIER
LEVEL 01

SAN FRANCISCO CRUISE TERMINAL, LLC
JUNE 2003
THE JERDE PARTNERSHIP INTERNATIONAL
SKIDMORE, OWINGS & MERRILL, LLP
EDAW



BRYANT STREET PIER

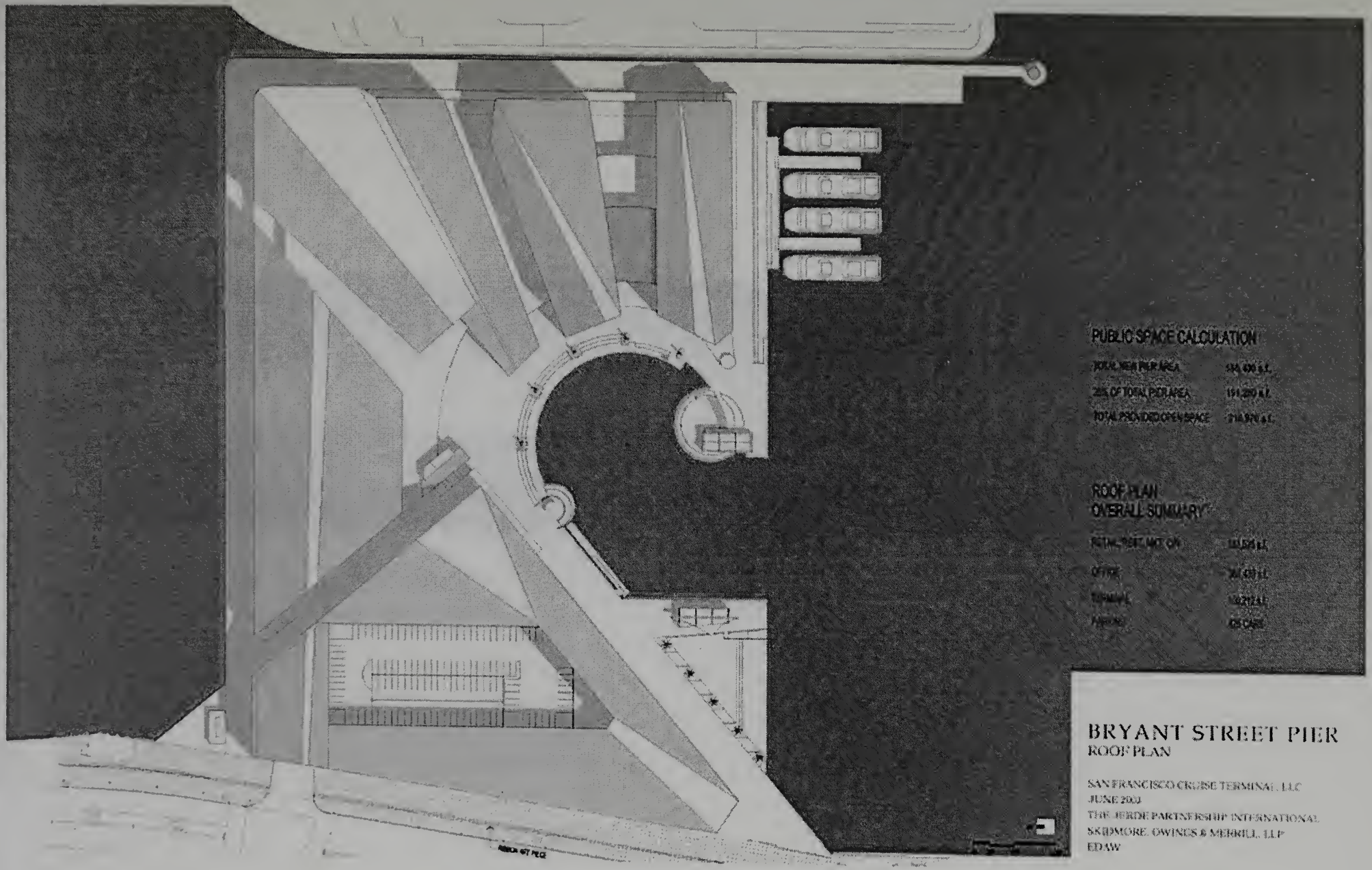
LEVEL 02

SAN FRANCISCO CRUISE TERMINAL, LLC
JUNE 2003
THE JERDE PARTNERSHIP INTERNATIONAL
SKIDMORE, OWINGS & MERRILL, LLP
EDAW

BRYANT STREET PIER

LEVEL 03

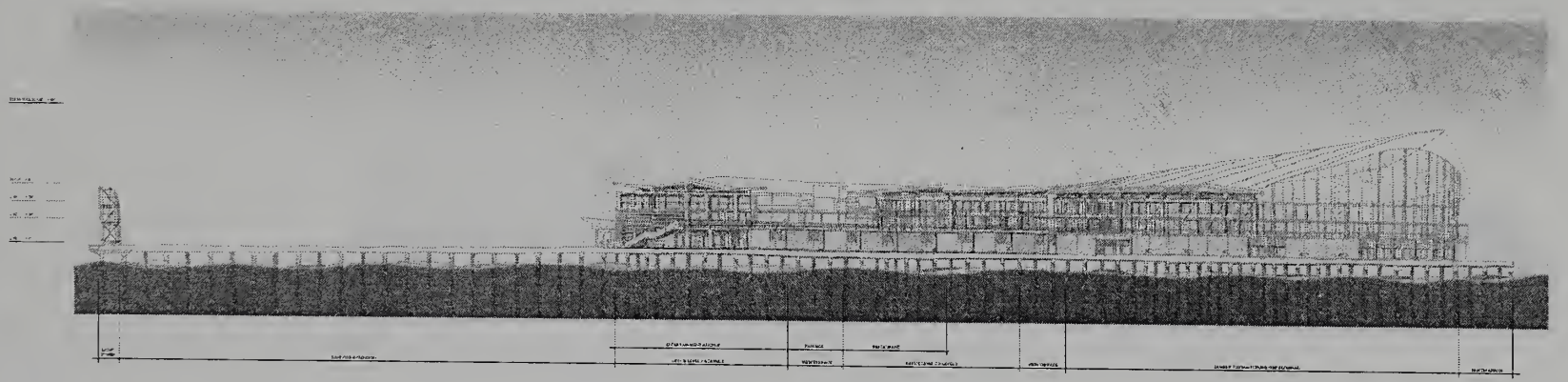
SAN FRANCISCO CRUISE TERMINAL, LLC
JUNE 2003
THE JERDE PARTNERSHIP INTERNATIONAL
SKIDMORE, OWINGS & MERRILL, LLP
EDAW



BRYANT STREET PIER

ROOF PLAN

SAN FRANCISCO CRUISE TERMINAL, LLC
JUNE 2003
THE HERDE PARTNERSHIP INTERNATIONAL
SKIDMORE, OWINGS & MERRILL, LLP
EDAW



BRYANT STREET PIER
EAST ELEVATION

SAN FRANCISCO CRUISE TERMINAL, LLC
JUNE 2003
THE VERDE PARTNERSHIP INTERNATIONAL
SKIDMORE, OWINGS & MERRILL, LLP
EDAW

BRYANT STREET PIER
NORTH ELEVATION

SAN FRANCISCO CRUISE TERMINAL, LLC
JUNE 2013
THE JERDE PARTNERSHIP INTERNATIONAL
SKIDMORE, OWINGS & MERRILL, LLP
EDAW

BRYANT STREET PIER

WEST ELEVATION

SAN FRANCISCO CRUISE TERMINAL, LLC
JUNE 2010
THE JERDE PARTNERSHIP INTERNATIONAL
SKIDMORE, OWINGS & MERRILL LLP
EDAW

BRYANT STREET PIER

EMBARCADERO STREET VIEW

SAN FRANCISCO CRUISE TERMINAL, LLC

JUNE 2003

THE JERDE PARTNERSHIP

SKIDMORE, OWINGS & MERRILL, LLP

EDAW

BRYANT STREET PIER

NORTH APRON VIEW

SAN FRANCISCO CRUISE TERMINAL, LLC
JUNE 2003
THE JERDE PARTNERSHIP
SKIDMORE, OWINGS & MERRILL, LLP
EDAW

BRYANT STREET PIER

SOUTH PLAZA VIEW

SAN FRANCISCO CRUISE TERMINAL, LLC

JUNE 2005

THE JERDE PARTNERSHIP

SKIDMORE, OWINGS & MERRILL, LLP

EDAW

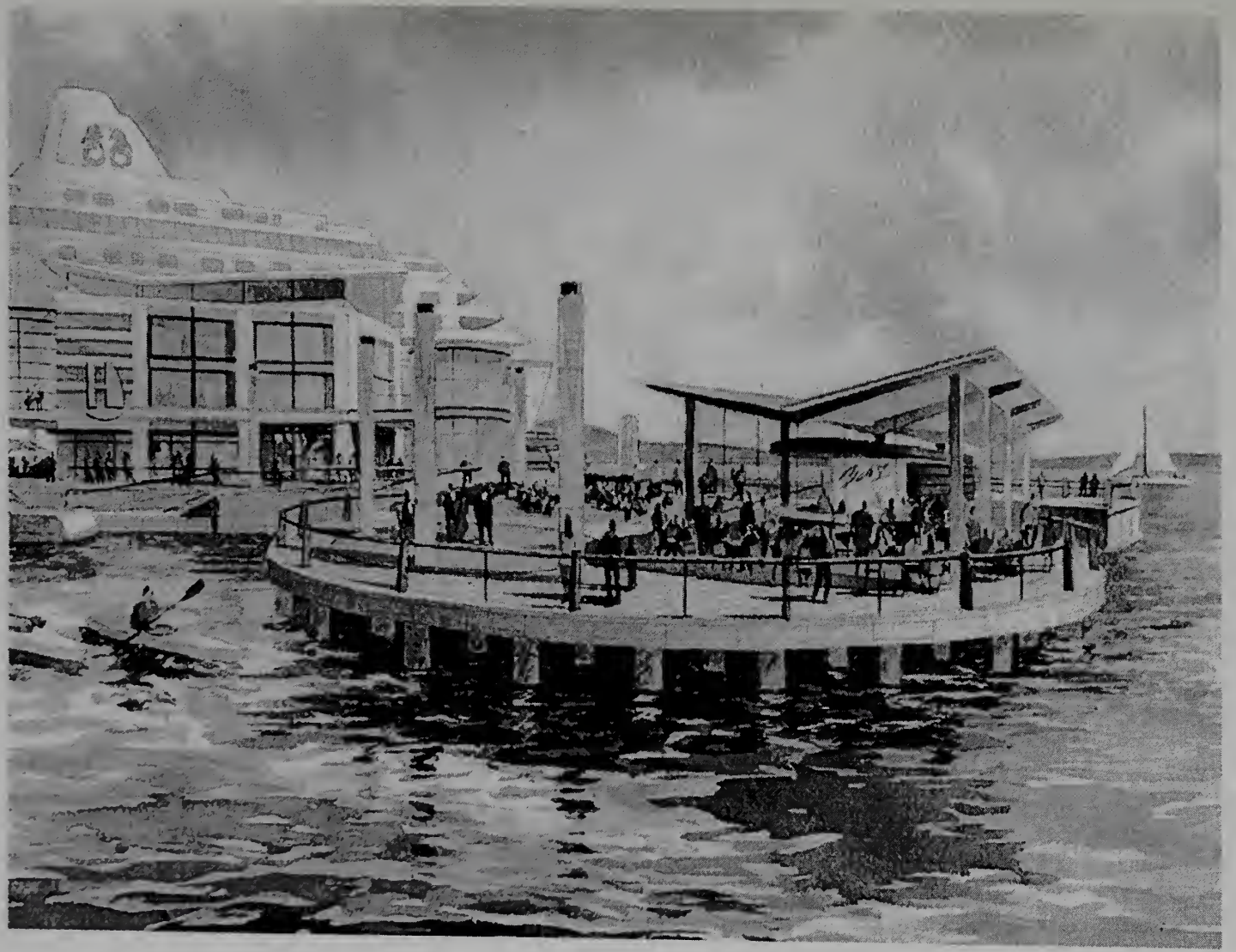
BRYANT STREET PIER

BRYANT STREET BASIN
(SHIP IN DOCK)
SAN FRANCISCO CRUISE TERMINAL, LLC
JUNE 2003
THE JERDE PARTNERSHIP
SKIDMORE, OWINGS & MERRILL, LLP
EDAW

BRYANT STREET PIER

SOUTHERN PROMENADE AT
TERMINAL ENTRY

SAN FRANCISCO CRUISE TERMINAL, LLC
JUNE 2005
THE JERDE PARTNERSHIP
SKIDMORE, OWINGS & MERRILL, LLP
EDAW



BRYANT STREET PIER

PERFORMANCE PLAZA VIEW

SAN FRANCISCO CRUISE TERMINAL, LLC

JUNE 2005

THE JERDE PARTNERSHIP

SKIDMORE, OWINGS & MERRILL, LLP

EDAW

BRYANT STREET PIER

TERMINAL INTERIOR

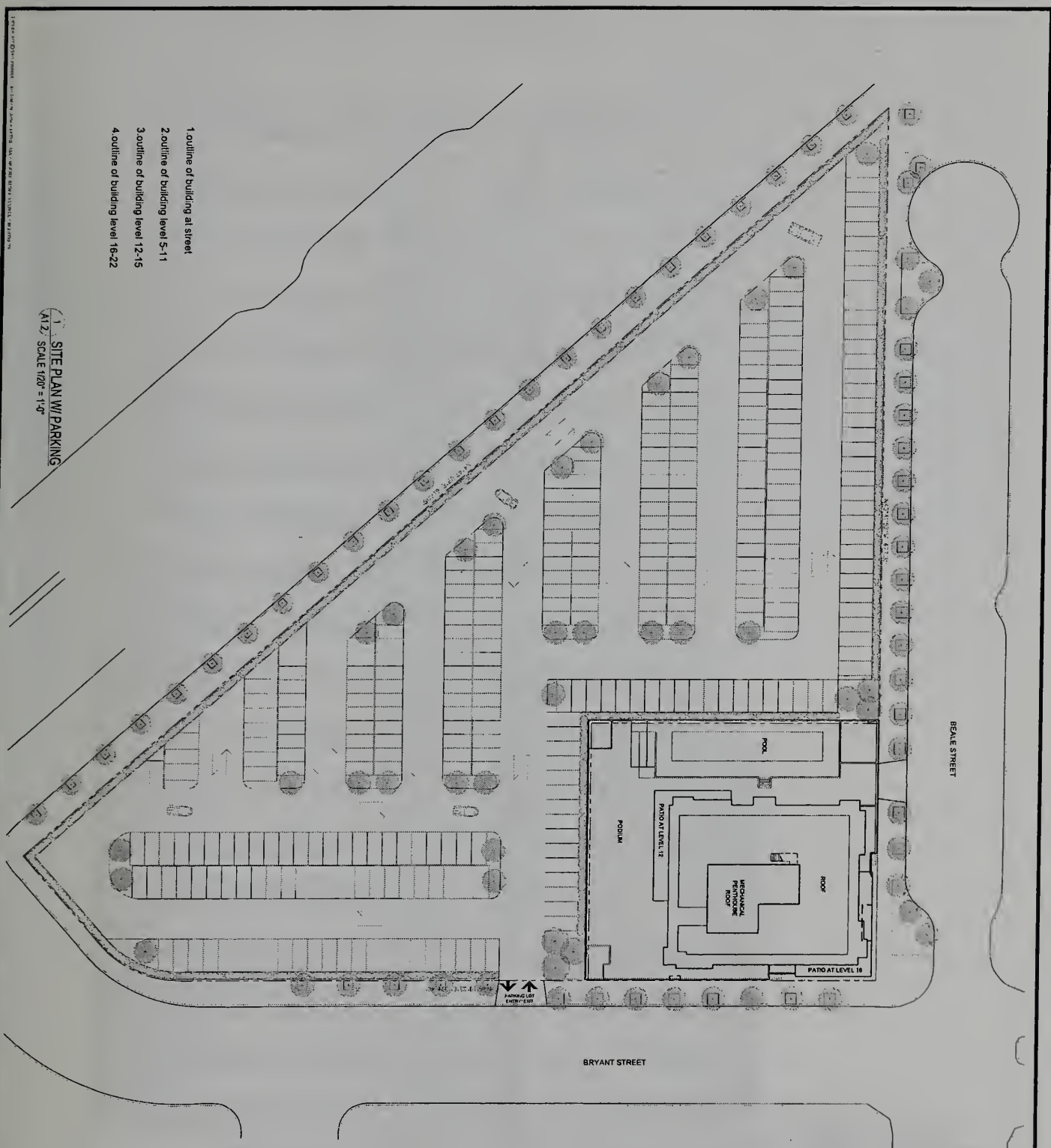
SAN FRANCISCO CRUISE TERMINAL, LLC

JUNE 2003

THE JERDE PARTNERSHIP

SKIDMORE, OWINGS & MERRILL, LLP

EDAW



ATTACHMENT "B"

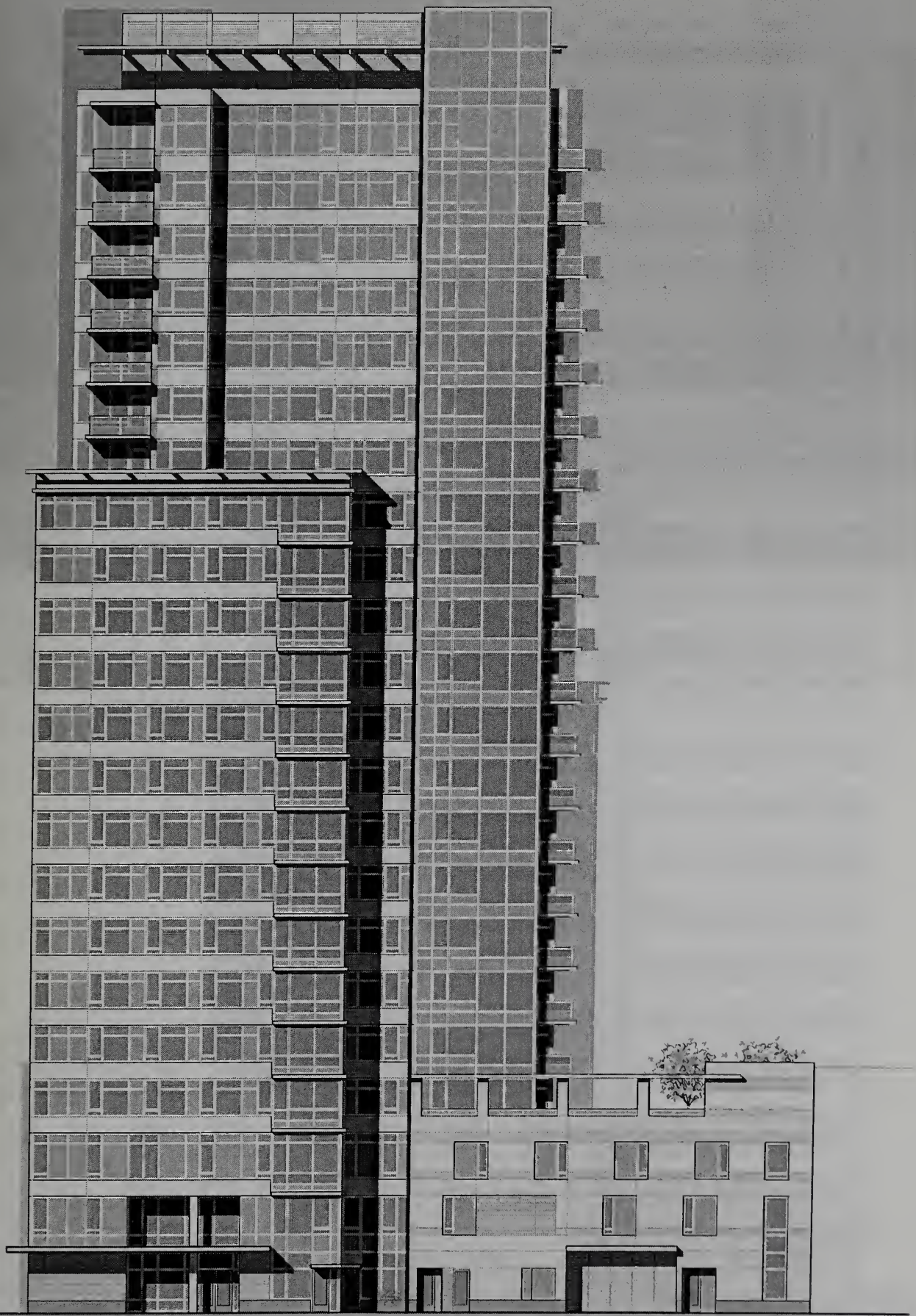
A1.2 SHEET	SITE PLAN	BRYANT STREET RESIDENTIAL TOWER SAN FRANCISCO CRUISE TERMINAL, LLC	FISHER FRIEDMAN ASSOCIATES AIA ARCHITECTURE PLANNING URBAN DESIGN 1485 PARK AVE, SUITE 101 EMERYVILLE, CA 94608 PHONE: 510 420 1666 FAX: 510 420 1699	MOORE RUBLE YUDELL ARCHITECTS 933 PICO BOULEVARD SANTA MONICA, CALIFORNIA PHONE 310.450.1400 FAX 310.450.1483

BRYANT STREET SEAWALL

SOUTHEAST ELEVATION | SCALE : 1/16" = 1'-0"

SAN FRANCISCO CRUISE TERMINAL, LLC | MOORE RUBLE YUDELL ARCHITECTS

DATE: 06.18.03

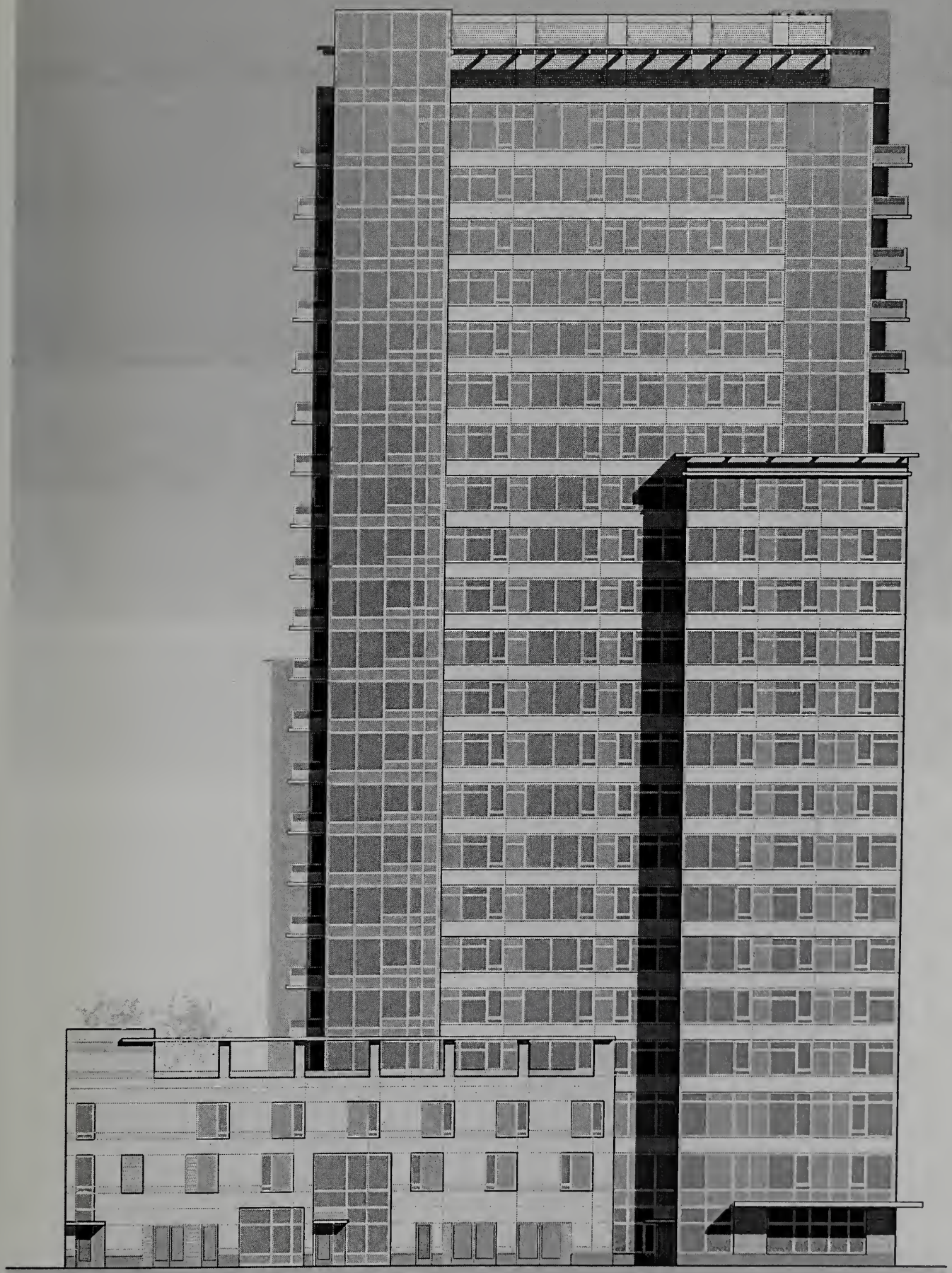


BRYANT STREET SEAWALL

SOUTHWEST ELEVATION : BEALE STREET | SCALE : 1/16" = 1'-0"

DATE: 06.18.03

SAN FRANCISCO CRUISE TERMINAL, LLC | MOORE RUBLE YUDELL ARCHITECTS



BRYANT STREET SEAWALL

NORTHWEST ELEVATION : BRYANT STREET | SCALE : 1/16" = 1'-0"

DATE: 06.18.03

SAN FRANCISCO CRUISE TERMINAL, LLC | MOORE RUBLE YUDELL ARCHITECTS

BRYANT STREET SEAWALL

NORTHEAST ELEVATION | SCALE : 1/16" = 1'-0"

DATE: 06.18.03

SAN FRANCISCO CRUISE TERMINAL, LLC | MOORE RUBLE YUDELL ARCHITECTS

PORT OF SAN FRANCISCO

MEMORANDUM

June 18, 2003

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Sue Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval of an Exchange of the public trust and Burton Act trust that would remove the public trust and Burton Act trust from approximately 22,600 square feet of unimproved real property located at intersection of Bryant and Beale Streets, being the westernmost corner of Seawall Lot 330, and would place the public trust and Burton Act trust on an approximately 10.34 acre site located between Maryland Street, Cesar Chavez Street, and 24th Street, on the eastern portion of the parcel commonly known as the Western Pacific parcel

DIRECTOR'S RECOMMENDATION: APPROVE THE TRUST EXCHANGE

I. Background.

On March 25, 2003, by Resolution No. 03-28, the Port Commission approved a number of actions relating to the development of the James R. Herman International Cruise Terminal and mixed use project ("Cruise Terminal Mixed Use Project") at Pier 30-32, the development of the Brannan Street Wharf, and the sale to San Francisco Cruise Terminal, LLC ("SFCT") of an approximately 22,000 square foot parcel located at Seawall Lot 330 for development of a condominium project. Since that time, the parties have agreed upon the precise description of the condominium site as an approximately 22,600 square foot parcel more particularly illustrated on the site plan attached hereto as Exhibit A (the "Condo Site").

As described to the Port Commission at its March 25, 2003 meeting, the development of the Cruise Terminal Mixed Use Project and the development of the adjacent Brannan Street Wharf as a major shore-side open space is the culmination of a lengthy planning process for the San Francisco northeast waterfront. The cruise terminal will provide a state-of-the-art facility to

This Print Covers Calendar Item No. 6C

meet increased demand for cruise ships, enhance the Port's international reputation as a first class cruise destination, and preserve and create new maritime jobs on Piers 30-32 and throughout San Francisco's waterfront. The Cruise Terminal Mixed Use Project will add significant new public access and viewing areas integrated into the commercial development component. The Brannan Street Wharf will provide a world-class open space for the community, the City and visitors to San Francisco. Development of the Condo Site for residential condominiums will finance these objectives while complementing the adjacent residential uses. Together all of these components will create a signature mixed-use waterfront project which achieves a high level of year-round public use and support and achieve a use and design program which respects and complements the existing South Beach neighborhood, uniting the City with its waterfront.

Under the terms of a Purchase and Sale Agreement (the "Sale Agreement") approved by the Port Commission through Resolution No. 03-28, the Port would sell the Condo Site to SFCT for construction of a condominium tower, and the Port would participate in sales proceeds from individual condominium units. The parties anticipate that SFCT would complete the Condo Project by mid-2005. In Resolution No. 03-28, the Port Commission adopted a policy that, once the Port obtained sufficient funds from the sale and development of the Condo Site, plus an additional $6 Million in Port capital funds from its Special Area Plan fund, it would cause SFCT to construct the Brannan Street Wharf (anticipated to commence by the end of 2005) under the terms of the Lease Disposition and Development Agreement between the parties. In addition, upon satisfaction of certain conditions precedent under the LDDA, the Port would deliver a 66-year Lease to SFCT for construction and operation of the Cruise Terminal Mixed Use Project.

The Condo Site consists of filled tidelands that the State of California transferred to the Port of San Francisco in 1968 pursuant to the Burton Act (Stats. of 1968, Ch. 1333). The Condo Site is therefore encumbered with the public trust for commerce, navigation and fisheries as well as the Burton Act trust (collectively, the "Trust"). The Trust prohibits the sale of the Condo Site and prohibits residential development. Therefore, as a condition precedent to the sale of the Condo Site to SFCT, the Sale Agreement requires the City, acting through the Port Commission, to remove the Trust from the Condo Site.

In 1987, the State legislature adopted Chapter 310, Statutes of 1987 Section 5 ("Chapter 310") which, among other matters, authorizes the City, subject to State Lands Commission approval, to exchange City property subject to the Trust with public or private entities for property not subject to the Trust if the City determines that the land to be exchanged out of the Trust (1) has been filled and reclaimed; (2) is cut off from access to the waters of the Bay; (3) represents a relatively small portion of the granted tide and submerged lands; (4) is no longer needed or required for the promotion of the Trust; and (5) can be removed from the Trust without causing any substantial interference with Trust uses and purposes. In addition, the land to be exchanged into the Trust must have a value equal to or greater than the value of land to be exchanged out of the Trust.

The Port has identified a piece of real property held by it that is not currently subject to the Trust, which would serve as the receiving parcel for the Trust. This Parcel is an approximately 10.34 acre portion of the property commonly referred to as the Western Pacific Parcel, shown on Exhibit B attached hereto (the "Receiving Parcel").

As described below, the proposed exchange would satisfy the requirements of Chapter 310.

A. Condo Site. The Condo Site is located on the landward side of the 100-foot wide Embarcadero, across from Pier 30-32. The property was filled in the early part of the twentieth century, as part of the Port's program of reclaiming lands between the new seawall and the previously existing City waterfront, for the purpose of moving the shoreline toward deeper waters and generating revenues used to support the improvement of the harbor. The property has no access to the waters of the Bay and is currently in interim use for surface parking to support downtown office and neighborhood housing.

The Condo Site comprises the portion of Seawall Lot 330 that is furthest removed from the waterfront, with inland frontage on Bryant and Beale Streets, and is surrounded by residential and residential-serving commercial uses. The adjacent high density apartment and condominium development was constructed as part of the Rincon/South Beach Redevelopment Plan following the Legislature's enactment of Chapter 310, which declared Seawall Lots 331, 332, and 333 to be free of the public trust and the use restrictions of the Burton Act. The Condo Site does not currently provide an opportunity for the development of a Trust-related use and is not anticipated to do so in the future. The site is in an undesirable location for open space or park use, being cut off from the water, immediately adjacent to the Bay Bridge, and adjoining two major roadways. The primary potential compatible Trust use of the property, as a hotel-serving cruise patrons and other visitors to the waterfront, has been found to be economically infeasible because of the site's distance from the City's financial district or tourist areas such as Fisherman's Wharf, the limited duration of the cruise season, and the economics of hotel development in the City. The most appropriate and economically viable use for the Condo Site is residential use. The development of housing would be the land use most compatible with surrounding uses. Residential development would also maximize the revenue to the Trust necessary to finance the Cruise Terminal Mixed Use Project and Brannan Street Wharf if the Trust were lifted off the site pursuant to the Exchange.

B. Receiving Parcel. The Receiving Parcel was freed of the Trust in 1998 pursuant to an exchange involving the redevelopment of Mission Bay. In exchange for the Port's agreement to restrict the use of certain lands in the Mission Bay area to open space, disputed Trust claims on the Western Pacific Parcel were settled by consolidating the Trust on a 125-foot shoreline band and transferring the remainder of the parcel, then owned by Catellus Development Corporation, to the Port free of the Trust. The Receiving Parcel comprises the area immediately adjacent to the shoreline band. The remaining 17 upland acres of the Western Pacific Parcel are currently occupied by the San Francisco Municipal Railway's Metro East maintenance and storage facility pursuant to an MOU with MUNI approved by the Port Commission in 2001.

At the time of the 1998 exchange, the areas of the Western Pacific Parcel landward of the shoreline band appeared to be of questionable value to the Trust, and the Port seriously considered these areas for non-Trust commercial and residential development. Since the exchange, however, the Port has made significant progress in its maritime marketing activities along the southern waterfront. Over the last five years, the Port has reoriented its marketing approach to target small container carriers and non-container carriers, which can be handled in combination through the Pier 80 terminal adjacent to the Western Pacific Parcel. This marketing strategy has been further enhanced by the partnership and close coordination between the Port and Marine Terminals Corporation, which manages the Pier 80 facility. As a result of this

strategic shift, the Port now contracts with 12 different carriers that call at Pier 80. This has resulted in an increased demand and new markets in the surrounding area for maritime and other waterfront-related industrial activities. In view of these changed circumstances, the Receiving Parcel is considered useful and necessary for Trust purposes. Port staff has prepared a report discussing the changing trust needs for the Western Pacific Property entitled "The Pier 80 Terminal Complex: Meeting Cargo Growth Needs at the Pier 80 Omni Terminal and former Western Pacific Site." A copy of that report is attached hereto as Exhibit C for your review and consideration.

It is important to note that the proposed Exchange is not a land use approval for development at the Receiving Parcel. No development is proposed at the Receiving Parcel at this time. Any future development at the Receiving Parcel would require Port Commission approval after completion and consideration of any environmental review required by CEQA. However, the placement of the Trust on the Receiving Parcel will require that all future development on the Receiving Parcel be consistent with the Trust. Like other Port Trust properties, future non-Trust leases of the Receiving Parcel, such as general storage or construction staging, would most likely be limited to interim periods of five years or less. In addition, should State Lands Commission concurrence be sought for future development (as is often the case where significant private money is being invested), it is unlikely that the State Lands Commission would accept significant new construction on the Receiving Parcel for any purposes other than a Trust use. As set forth in the report attached as Exhibit C hereto, such likely uses would support maritime activities, such as covered storage facilities or open storage yards serving the Port's marine terminal at Pier 80.

C. Appraisal. The Condo Site and the Receiving Parcel were each appraised at their fair market value by Clifford & Associates in "Appraisal Report – Development site, Seawall Lot 330, Bryant Street/The Embarcadero, San Francisco, CA (February, 2003)" and "Appraisal Report, 10.34 Acre portion of Western Pacific Site, San Francisco, CA (May 2003)" (collectively, the "Appraisal"). The Appraisal concludes that the Receiving Parcel has a total net present value of $10,700,000, and that the Condo Site has a total net present value of $9,300,000, for a net surplus of $1,400,000 in increased market value for the Trust. Copies of the Appraisal are on file with the Secretary of the Port Commission for your review.

II. Terms of Exchange Agreement.

In order to accomplish the proposed Trust exchange, the Port would enter into an Exchange Agreement with the State Lands Commission. The proposed Exchange Agreement includes the following material terms:

- Conveyances: The purposes of the Exchange Agreement will be accomplished through the following recorded conveyances:

    i. The City will convey to the State by grant deed the Receiving Parcel;

    ii. After accepting conveyance of the Receiving Parcel from the City, the State will patent back to the City, the Receiving Parcel, to be held by the Port, subject to the Trust; and

iii. The State will quitclaim to the City free of the Trust, all of its right, title and interest in the Condo Site.

- Use of Funds received from sale of Condo Site. Following the exchange, all moneys received by the City arising out of the sale, lease, use, operation or other disposition of the Condo Site shall be deposited in an account controlled by the Port to be used exclusively in furtherance of the purposes specifically authorized in the Burton Act and in accordance with the provisions of the Sale Agreement.

- Escrow Instructions. The Exchange Agreement will set forth escrow instructions governing the mechanics of the exchange. In particular, the exchange will not occur until and unless close of escrow occurs for the sale of the Condo Site to SFCT under the Sale Agreement.

Because the Exchange Agreement involves a transfer of City real property, the Exchange Agreement must be approved by the Board of Supervisors under Section 9.118(c) of the City's Charter. The Exchange Agreement must also be approved by the State Lands Commission pursuant to Chapter 310. The Port anticipates that the State Lands Commission will consider the Exchange Agreement in August 2003.

III. Environmental Review.

Approval of the Exchange Agreement is within the scope of the CEQA findings adopted by the Port Commission through Resolution No. 03-27. The Resolution before you today incorporates those findings by reference, and further finds that (1) there have been no changes in the proposed project or changes in circumstances surrounding the project, or (2) there has been no new information, that would result in new adverse impacts or mitigation measures that would require additional environmental review.

Prepared by: Neil H. Sekhri, Assistant Port General Counsel

PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO

RESOLUTION NO. 03-44

WHEREAS, On March 25, 2003, by Resolution No. 03-28, the Port Commission approved a number of actions relating to the development of a mixed-use Cruise Terminal project at Pier 30-32 ("Cruise Terminal Mixed Use Project"), the development of the Brannan Street Wharf, and the sale to San Francisco Cruise Terminal, LLC ("SFCT") of an approximately 22,000 square foot parcel located at Seawall Lot 330 for development of a condominium project; and

WHEREAS, In connection with its approvals under Resolution No. 03-28, the Port Commission reviewed and considered the Revised FSEIR and the Waterfront Plan Final EIR (as those terms are defined in Port Commission Resolution No. 03-27), and, by Resolution No. 03-27, adopted CEQA Findings, including a statement of overriding considerations, attached to Resolution No. 03-27 as Attachment A, and its Exhibits 1 and 2, which CEQA Findings are incorporated herein by this reference; and

WHEREAS, Since March 25, 2003, the parties have agreed upon a more precise description of the condominium site as being an approximately 22,600 square foot parcel (the "Condo Site"), more particularly illustrated on the site plan attached as Exhibit A to the Memorandum to Port Commissioners, dated June 18, 2003, a copy of which is on file with the Port Commission Secretary for Item 6C; and

WHEREAS, As described to the Port Commission at its March 25, 2003 meeting, the development of the James R. Herman International Cruise Terminal and mixed use project at Piers 30-32 (collectively, the "Cruise Terminal Mixed Use Project") and the development of the adjacent Brannan Street Wharf as a major shore-side open space is the culmination of a lengthy planning process for the San Francisco northeast waterfront; and

WHEREAS, The cruise terminal will provide a state-of-the-art facility to meet increased demand for cruise ships, enhance the Port's international reputation as a first class cruise destination, and preserve and create new maritime jobs on Piers 30-32 and throughout San Francisco's waterfront; and

WHEREAS, The Cruise Terminal Mixed Use Project will add significant new public access and viewing areas integrated into the commercial development component, the Brannan Street Wharf will provide a world-class open space for the community, the City and visitors to San Francisco, and development of the Condo Site for residential condominiums will finance these objectives while complementing the adjacent residential uses; and

WHEREAS, Together all of these components will create a signature mixed-use waterfront project which achieves a high level of year-round public use and support and achieve a use and design program which respects and complements the existing South Beach neighborhood, uniting the City with its waterfront; and

WHEREAS, Under the terms of a Purchase and Sale Agreement (the "Sale Agreement") approved by the Port Commission through Resolution No. 03-28, the Port would sell the Condo Site to SFCT for construction of a condominium tower, and the Port would participate in sales proceeds from individual condominium units, which funds would contribute towards SFCT's construction of the Brannan Street Wharf and development of the Cruise Terminal Mixed Use Project on Piers 30-32; and

WHEREAS, The Condo Site consists of filled tidelands that the State of California transferred to the Port of San Francisco in 1968 by authorization under the Burton Act (Stats. of 1968, Ch. 1333), and is therefore encumbered with the public trust for commerce, navigation and fisheries as well as the Burton Act trust (collectively, the "Trust"), which prohibits the sale of the Condo Site and development of residential uses thereon; and

WHEREAS, As a condition precedent to the sale of the Condo Site to SFCT, the Sale Agreement requires the City, acting through the Port Commission, to remove the Trust from the Condo Site; and

WHEREAS, In 1987, the State legislature adopted Chapter 310, Statutes of 1987 ("Chapter 310") which, among other matters, authorizes the City, subject to State Lands Commission approval, to exchange City property subject to the Trust with public or private entities for property not subject to the Trust if the City determines that the land to be exchanged out of the Trust (1) has been filled and reclaimed; (2) is cut off from access to the waters of the Bay; (3) represents a relatively small portion of the granted tide and submerged lands; (4) is no longer needed or required for the promotion of the Trust; and (5) can be removed from the Trust without causing any substantial interference with Trust uses and purposes, and further requires that the land to be exchanged into the Trust must have a value equal to or greater than the value of land to be exchanged out of the Trust; and

WHEREAS, The Port has identified a piece of real property held by it that is not currently subject to the Trust, which would serve as the receiving parcel for the Trust, which parcel consists of approximately 10.34 acre portion of the property commonly referred to as the Western Pacific Parcel, shown on Exhibit B to the Memorandum to Port Commissioners, dated June 18, 2003, a copy of which is on file with the Port Commission Secretary for Item 6C attached hereto (the "Receiving Parcel"); and

WHEREAS, The Port Commission finds that the proposed exchange would satisfy the requirements of Chapter 310 for the following reasons:

1. The Condo Site is located on the landward side of the 100-foot wide Embarcadero, across from Piers 30-32. The property was filled in the early part of the twentieth century, as part of the Port's program of reclaiming lands between the new seawall and the previously existing City waterfront, for the purpose of moving the shoreline toward deeper waters and generating revenues used to support the improvement of the harbor. The property has no access to the waters of the Bay and is currently in interim use for surface parking to support downtown office and neighborhood housing. At approximately 22,600 square feet, the Condo Site encompasses a relatively small portion (approximately 0.06%) of the tide and submerged lands granted to the City.

2. The Condo Site comprises the portion of Seawall Lot 330 that is furthest removed from the waterfront, with inland frontage on Bryant and Beale Streets, and is surrounded by residential and residential-serving commercial uses. The adjacent high density apartment and condominium development was constructed as part of the Rincon/South Beach Redevelopment Plan following the Legislature's enactment of Chapter 310, which declared Seawall Lots 331, 332, and 333 to be free of the public trust and the use restrictions of the Burton Act. The Condo Site does not currently provide an opportunity for the development of a Trust-related use and is not anticipated to do so in the future. The site is in an undesirable location for open space or park use, being cut off from the water, immediately adjacent to the Bay Bridge, and adjoining two major roadways. The primary potential compatible Trust use of the property, as a hotel serving cruise patrons and other visitors to the waterfront, has been found to be economically infeasible because of the site's distance from the City's financial district or tourist areas such as Fisherman's Wharf, the limited duration of the cruise season, and the economics of hotel development in the City. The most appropriate and economically viable use for the Condo Site is residential use. The development of housing would be the land use most compatible with surrounding uses. Residential condominium development would also maximize the revenue to the Trust necessary to finance the Cruise Terminal Mixed Use Project and Brannan Street Wharf if the Trust were lifted off the site pursuant to the Exchange.

3. The Receiving Parcel was freed of the Trust in 1998 pursuant to an exchange involving the redevelopment of Mission Bay. In exchange for the Port's agreement to restrict the use of certain lands in the Mission Bay area to open space, disputed Trust claims on the Western Pacific Parcel were settled by consolidating the Trust on a 125-foot shoreline band and transferring the remainder of the parcel, then owned by Catellus Development Corporation, to the Port free of the Trust. The Receiving Parcel comprises the area immediately adjacent to the shoreline band. The remaining 17 upland acres of the Western Pacific Parcel are currently occupied by the San Francisco Municipal Railway's Metro East maintenance and storage facility pursuant to an MOU with MUNI approved by the Port Commission in 2001.

At the time of the 1998 exchange, the areas of the Western Pacific Parcel landward of the shoreline band appeared to be of questionable value to the Trust, and the Port seriously considered these areas for non-Trust commercial and residential development. Since the exchange, however, the Port has made significant progress in its maritime marketing activities along the southern waterfront. Over the last five years, the Port has reoriented its marketing approach to target small container carriers and non-container carriers, which can be handled in combination through the Pier 80 terminal adjacent to the Western Pacific Parcel. This marketing strategy has been further enhanced by the partnership and close coordination between the Port and Marine Terminals Corporation, which manages the Pier 80 facility. As a result of this strategic shift, the Port now contracts with 12 different carriers that call at Pier 80. This has resulted in an increased demand and new markets in the surrounding area for maritime and other waterfront-related industrial activities. In view of these changed circumstances, the Receiving Parcel is considered useful and necessary for Trust purposes. Port staff has prepared a report discussing the changing trust needs for the Western Pacific Property entitled "The Pier 80 Terminal Complex: Meeting Cargo Growth Needs at the Pier 80 Omni Terminal and former Western Pacific Site." A copy of that report is attached as Exhibit C to the Memorandum to Port Commissioners, dated June 18, 2003, a copy of which is on file with the Port Commission Secretary for Item 6C, and is incorporated herein by this reference.

4. The Condo Site and the Receiving Parcel were each appraised at their fair market value by Clifford & Associates in "Appraisal Report – Development site, Seawall Lot 330, Bryant Street/The Embarcadero, San Francisco, CA (February, 2003)" and "Appraisal Report, 10.34 Acre portion of Western Pacific Site, San Francisco, CA (May 2003)" (collectively, the "Appraisal"). The Appraisal concludes that the Receiving Parcel has a total net present value of $10,700,000, and that the Condo Parcel has a total net present value of $9,300,000, for a net surplus of $1,400,000 in increased market value for the Trust. The Port Commission has reviewed and concurs with the conclusions set forth in the Appraisal, copies of which are on file with the Port Commission Secretary for Item 6C of the Port Commission's June 24, 2003 meeting, and are incorporated herein by this reference; and

WHEREAS, In order to accomplish the proposed Trust exchange, the Port Commission wishes to authorize the Port's Executive Director to negotiate and enter into an agreement with the State Lands Commission, authorizing and implementing an exchange of the Trust on the material terms set forth in the Memorandum to Port Commission dated June 18, 2003 (the "Exchange"), a copy of which is on file with the Port Commission Secretary for Item 6C, and is incorporated herein by this reference; and

WHEREAS, the proposed Exchange is not a land use approval for development at the Receiving Parcel, no development at the Receiving Parcel is currently proposed, and any future development at the Receiving Parcel would require Port Commission approval after completion and consideration of any environmental review required by CEQA; now, therefore, be it

RESOLVED, That the Port Commission has reviewed and considered the information contained in the Revised FSEIR and the Waterfront Plan Final EIR, and finds that for purposes of compliance with CEQA, the transactions contemplated by the Exchange are part of the Cruise Terminal Project as that term is defined and examined in the Revised FSEIR and Waterfront Plan Final EIR for which the Port Commission, by Resolution No. 03-27, has adopted findings as required by CEQA, which findings are on file with the Secretary of the Port Commission under File No. 03-27, and which findings are incorporated herein by reference; and be it further

RESOLVED, That based on the foregoing, the Port Commission hereby finds that: (1) the Exchange is within the scope of the Cruise Terminal Project, as that term is defined and analyzed in the Revised FSEIR, and the Waterfront Plan Final EIR and does not raise any important new issues about the significant effects on the environment not previously considered in the Revised FSEIR and the Waterfront Plan Final EIR; (2) no changes are proposed or have occurred in the Cruise Terminal Project that would require major revisions to the Revised FSEIR and the Waterfront Plan Final EIR due to the involvement of significant new environmental effects or a substantial increase in the severity of previously identified significant effects; (3) no substantial changes have occurred with respect to the circumstances under which the Cruise Terminal Project is being undertaken that would require major revisions to the Revised FSEIR and the Waterfront Plan Final EIR due to the involvement of significant new environmental effects or a substantial increase in the severity of previously identified significant effects; and (4) no new information of substantial importance has become available since the Revised FSEIR was certified indicating that: (a) the Cruise Terminal Project will have one or more significant effects not discussed in the Revised FSEIR and the Waterfront Plan Final EIR; (b) significant effects examined in the Revised FSEIR and the Waterfront Plan Final EIR would be substantially more severe; (c) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Cruise Terminal Project; or (d) mitigation measures or alternatives which are considerably different from those analyzed in the Revised FSEIR and the Waterfront Plan Final EIR would substantially reduce one or more significant effects on the environmental; and be it further

RESOLVED, For the reasons set forth herein, the Commission finds that (1) the Exchange will maximize the overall benefits to the Trust and will not interfere with Trust uses or purposes; (2) the Condo Site has been filled and reclaimed, is cut off from access to the waters of San Francisco Bay, constitutes a relatively small portion (approximately 0.06%) of the tide and submerged lands granted to the City, and is no longer needed or required for the promotion of the Trust; (3) removing the Trust from the Condo Site will not result in substantial interference with Trust uses and purposes, and would promote Trust purposes by generating sufficient funds to allow the development of the Cruise Terminal Mixed Use Project, including the Brannan Street Wharf, augment a resident population situated to take full advantage of the public amenities located along the Port, and better ensure the success of Port projects on the northern waterfront; and (4) the Receiving Parcel has greater value than the Condo Site, both in terms of fair market value and usefulness to the Trust; and be it further

RESOLVED, That the Exchange is in conformance with the Burton Act and Ch. 310, subject to approval by the State Lands Commission; and be it further

RESOLVED, That the Commission hereby approves the Exchange materially on the terms and conditions set forth in the Memorandum for Agenda Item 6C for the Port Commission meeting on June 24, 2003; and be it further

RESOLVED, That the Port Commission authorizes and directs the Executive Director of the Port (the "Executive Director"), upon approval by the Board of Supervisors pursuant to its authority under Charter Section 9.118(c), to negotiate and execute an Exchange Agreement with the State Lands Commission upon the material terms set forth in the Memorandum to Port Commission dated June 18, 2003, a copy of which is on file with the Port Commission Secretary for Item 6C, and is incorporated herein by this reference, and in such final form as is approved by the Executive Director in consultation with the City Attorney; and be it further

RESOLVED, That the City's Director of Property and the Port's Executive Director are hereby authorized and urged, in the name and on behalf of the City and County and the Port, to execute and deliver all conveyance deeds and instruments as may be necessary to implement the Exchange in accordance with the terms and conditions of the Sale Agreement and Exchange Agreement, and to take any and all steps (including, but not limited to, the execution and delivery of any and all certificates, agreements, notices, consents, escrow instructions, closing documents and other instruments or documents) as they deem necessary or appropriate in order to consummate the Exchange, or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Director of Property and Executive Director of any such documents; and be it further

RESOLVED, That the Port Commission approves, confirms and ratifies all prior actions taken by the officials, employees and agents of the Port Commission or the City with respect to the Cruise Terminal Mixed Use Project, the Brannan Street Wharf and the Condo Site.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of June 24, 2003.

_____
Secretary

Area	Size	Use
a	22,600 S.F.	Condominium
b	101,356 S.F.	Remainder of site
total	123,956 S.F.	(2.84 acres)

'HIBIT A

:A WALL LOT 330

rt of San Francisco

scale 0 100' 200'

N

November, 2002

Western Pacific Upland 30 acres
Total Western Pacific Site 39 acres
Upland Area Site Data
Muni Metro East Site 17.00 acres
Subject Property 10.34 acres
Shoreline Band 2.66 acres
Total Upland area 30.00 acres
Exhibit B
"MUNI- METRO EAST - WESTERN PACIFIC SITE"
Port of San Francisco
scale 0 200' 300'
24th Street
Third Street
Illinois Street
Michigan Street
25th Street
shoreline at mean high tide (approximate)
125' setback from shoreline
2.66 acres
Muni Metro East Site 17 Acres
SUBJECT PROPERTY 10.34 ACRES
Cesar Chavez Street

PORT OF SAN FRANCISCO

MEMORANDUM

June 18, 2003

TO: **MEMBERS, PORT COMMISSION**
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Sue Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: **Piers 27-31 - Mixed Use Recreation Project: Informational Presentation by SF Piers 27-31, LLC ("Developer") on Revisions to Preferred Alternative Project following State Lands Commission Action**

DIRECTOR'S RECOMMENDATIONS: NO ACTION REQUIRED

I. EXECUTIVE SUMMARY

This informational item provides for the selected Developer for the Piers 27-31 Mixed Use Recreation Project, SF Piers 27-31, LLC, to present to the Port Commission its revised Preferred Alternative Project. The State Lands Commission at its June 2, 2003 public meeting determined that the project, as amended, was consistent with the Public Trust Doctrine and the Burton Act. Today's presentation by the Developer is required by Performance Benchmark No. 3 (regarding significant changes to the site plan) included in the First Amendment to the ERN Agreement approved by the Commission in November 2002.

The most significant revisions proposed by the Developer to the Preferred Project Alternative, in response to direction from State Lands staff, include (in the order discussed herein):

- New YMCA facility: Refocused program linkages to Marine Sports Basin and maritime uses in general;
- Pier 31: Reduced General Office space, increased Trust uses and increased public access within the structure to enhance visibility of historic elements;

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F SAN FRANCISCO

- Pier 29 & Bulkhead Building: Converted former Indoor Recreation or Recreation Retail to uses deemed by State Lands Commission staff to be Trust-consistent; reduced non-Trust related uses in Pier 29 and the Bulkhead building, and enhanced visibility of historic elements.

II. BACKGROUND

Any proposed major development project on Port waterfront property must be consistent with the Port's legislative Trust grant. The BCDC *San Francisco Special Area Plan*, as revised in July 2000, requires BCDC to make a determination of consistency with the Public Trust Doctrine and the Burton Act for any major development project within BCDC jurisdiction in the Northeastern Waterfront.

The Special Area Plan includes a new process whereby the Port Commission may request BCDC to make an early determination of Trust consistency, *(see Special Area Plan, page 45)*. However, the details of the BCDC determination process are not spelled out except to note that it requires BCDC to seek an advice letter from the Executive Director of the State Lands Commission and use that advice in its deliberation.

Port staff discussed with BCDC how best to move forward with this new process and agreed BCDC should consult with State Lands staff to determine an efficient course of action. In the course of that informal consultation with State Lands staff, the project review began.

Concerns raised by the State Lands staff, discussed in greater detail, below, focused on changes in the balance of Trust and non-Trust uses in the project within both new and existing buildings. In response to these concerns, the Developer made a number of changes to the proposed project site plan and uses. Subsequently, the State Controller, a member of the State Lands Commission, placed an item on that Commission's calendar to review the project and make its own determination of consistency, if it so chose. State Lands staff, relying on an advice letter it requested from the Attorney General's staff, then reviewed the project and requested the Developer make several changes to bring the project into compliance with the Public Trust Doctrine as understood by State Lands staff. After several weeks of project review by State Lands staff, on June 2, 2003, the State Lands Commission reviewed the project changes as recommended by State Lands staff and ruled 2-0, with one abstention, that, subject to certain terms and conditions, the project as amended by the Developer is Trust-consistent.

A copy of the Staff Report prepared by the SLC staff was sent to Port Commissioners separately last week; it is also attached herein as Exhibit A. That staff report states that in making its review State Lands staff relied in part on a policy adopted by the Commission in September, 2001 in a project from Southern California. That policy document is included herein as Exhibit B.

Under the Performance Benchmarks agreed to in the ERN, the Developer is required to submit to the Port Commission proposed revisions to the Preferred Alternative Project that are deemed to be "substantial modifications". Therefore, on June 6, 2003, SF Piers 27-31, LLC submitted substantially revised plans consistent with the State Lands Commission finding. On June 18, SF Piers 27-31, LLC submitted changes to its *Integrated Recreation Plan* and a revised table of square feet of uses, by pier, furthers describing the changes to the project. As called for in the

ERN, an updated pro forma will also be provided, no later than 60 days after receipt of the revised Preferred Alternative.

III. REVISIONS TO THE PREFERRED ALTERNATIVE PROJECT.

The Port Commission agenda of April 22, 2003 included an informational presentation on the status of the project changes up to that date -- prior to the State Lands requested amendments. The Staff Report included in that agenda item covered changes to the project beginning with the March 29, 2002 plan and including the revised submittals of August 2, 2002 and April 4, 2003. The revisions noted today are those made subsequent to the April 4 site plan presented on April 22.

State Lands Commission Rationale for Proposed Changes.
The legal theory and rationale supporting the Public Trust Doctrine would require an extended and complex treatise that is not appropriate in this staff report. However, *generally speaking*, as described in Chapter 3 of the Port's *Waterfront Land Use Plan*, "long-term uses deemed consistent with the Public Trust include all maritime and maritime support, other water-related industry, open space, public recreation and assembly, aquaria, museums, water-related commercial recreation, and specialty retail and commercial which is designed to draw people to the water, such as waterfront restaurants or commercial complexes such as Pier 39, maritime office and office in historic bulkhead buildings."

In reviewing the Piers 27-31 project, State Lands staff noted the basis of their positions on various elements of the project:

- Recreation. State Lands staff asserted that public recreation uses are ever-evolving, but must have some relationship to the water (i.e. be "water-oriented" or "water-enhanced") to be Trust-consistent; that "strictly" indoor recreation elements, even with views to the water, did not meet that test. The Marine Sports Basin plan was found fully Trust-consistent. Other outdoor recreation, because it affords views toward the water, may be considered water-enhanced and thus Trust-consistent. In addition, because the YMCA building was to be new construction over water, State Lands staff expressed concern that the building required a higher proportion of Trust-related uses connected to the water. They found that the YMCA as proposed contained an unacceptable proportion of non-Trust uses characteristic of a general neighborhood-serving YMCA. In particular, they were concerned about the Teen Center, Community Center, Launch Pad, and High Adventure Climbing as not being sufficiently maritime-oriented or maritime-enhanced.

- Historic preservation and incidental non-Trust uses. State Lands staff acknowledged that preservation of an historic maritime structure was a Trust use that allowed some incidental non-Trust uses (e.g. general office, non-Trust indoor recreation) to help fund that purpose; however, they felt that historic preservation by itself was not sufficient to support all non-Trust uses within an historic structure. Consequently, they found that the amount of general office in Pier 31 as a proportion of total uses was too great given that the pier shed uses were not primarily maritime-oriented. They also required extensive access for the public in the bulkheads, Pier 29 and 31, to view the historic elements in the structures.

- Pier-by-pier analysis. While staff relied upon the public Trust benefits of the Project as a whole to support the development of some incidental non-Trust uses over water, they also looked to the proportion of Trust to incidental non-Trust uses within each structure -- each transit shed, each bulkhead building, and the new YMCA building -- to make sure that there be substantial Trust uses within *each* individual structure. This approach is different from that used by National Park Service which considers the transit sheds and Bulkhead Building to be a single structure.

- Visitor-serving retail. The Attorney General's staff stated that, to be Trust-consistent, recreational retail uses must be water-oriented or enhanced by proximity to the waterfront, must be generally oriented to visitors, not local-serving, and had to be small in scale, to avoid creating "general merchandising" uses to be created over time. They considered the proposed 30,000 square foot space for recreational retail in Pier 29, involving sales of equipment for general recreation, to be a non-Trust use.

Proposed Changes to Facilities and Programs

In response to the direction of the State Lands Commission, the Developer has proposed the following project changes. These changes are reflected on the revised site plan, attached as Exhibit C (and available to the public in a color version on the Port's website under the Staff Report for this Agenda Item). Exhibit D, also attached, is a table summarizing the square footage changes, by pier, and by use, resulting from these changes.

A. YMCA: Refocus program linkages to Marine Sports Basin, to be primarily related to boating maritime and/or Bay-related environmental purposes.

A principle outcome of the State Lands-Developer discussions was to redesign the YMCA to support more explicitly the maritime uses in the project.

- Physical connections. To permit boaters to move easily between the YMCA's locker rooms and the Marine Sports Basin, the Developer widened a passageway through Pier 29, and added a new entrance to the YMCA, dedicated solely to use by participants in maritime sports. The Boating Center also was relocated to be alongside this passageway, bringing these functions closer together.

- Program connections. The YMCA, which provides substantial program support to the Marine Sports Basin program, which will be initially managed by American True, will give priority to the use of various rooms within the YMCA for boating-related programs, including physical training, classroom space, and meeting space. Several rooms within the YMCA will be made available on a priority basis at least 51% of the time for groups participating in boating or other water-oriented recreation, and/or for environmental organizations conducting programs of education, preservation and recreation.

- Facilities changes. Rooms within the YMCA Facility were modified to make them more usable by boating and other marine sports programs. For example, the Climbing Center has been redesigned to accommodate mariners learning to climb masts. Also, rotating displays of boats of various types will be located adjacent to the "bulkhead" portion of the YMCA to emphasize the primacy of marine sports at the project.

- Space for Port's Maritime Division needs. An area for use by the Port's Maritime Division will be created adjacent to the YMCA, to aid the Port's handling of an estimated 100 vessels per year at the Pier 27 berth. In addition, a Nautical Center space within the YMCA Facility will be made available on a priority basis to crews as needed when a vessel is berthed at Pier 27.

B. Pier 31: Increase Trust uses by reducing general office on the ground floor; increase public access and visibility of historic elements

Prior to discussions with State Lands staff, the Developer's plan had been to concentrate general office uses in the first and second floors of Pier 31, the second floor of Pier 29, and portions of the upper floor of the bulkhead building. However, based on State Land's direction, the Developer now proposes to convert the first half of the ground floor of Pier 31 to Trust uses, to add a new passageway across the eastward end of the Pier 31 shed, as well as add a new public passageway connecting a large restaurant and the Maritime Museum, making the historic elements of the structure at Pier 31 more visible to the public.

- Cut an additional 19,000 sf of General Office space out of Pier 31, reducing the total amount of general office space to 200,000 sf.

- Required 19,000 sf of new uses to be "Trust Office or Other Public Trust Use" on the north side of Pier 31, and "Non-Office Public Trust Use" on the south or Marine Sport Basin-facing side, as shown on the site plan. Within the 19,000 sf, 3,200 sf must be Maritime Office, which is a Trust consistent use, and must be located on the north side of a new passageway in Pier 31.

- Relocated and reoriented the Maritime Museum to be directly off the widened cross-pier passageway and at the end of a new passageway extending half of the length of the ground floor. Added a second cross-pier passageway towards the east end of the pier.

- Ensured public access to the mezzanine level, thus making it possible to see more of the trusswork and interior details of Pier 31.

C. Pier 29 & Bulkhead: Convert former Indoor Recreation or Recreation Retail to Trust Uses

Pier 29 had been planned to contain most of the non-YMCA indoor recreation as well as recreation retail uses. Because State Lands staff did not agree that indoor, non-water-oriented or water-enhanced recreation is Trust-consistent, the Developer has proposed to substitute these uses with substantial Trust-related retail ("visitor-serving" retail or maritime-related retail) on the ground floor.

- Limited non-Trust related uses (e.g. non-Trust indoor recreation and large floor-plate non-Trust recreation retail), with the result that 31,500 sf in Pier 29 and 11,000 sf in the Bulkhead will be converted to Trust uses;

- Relocated the Boating Center from Pier 31 to Pier 29, and situated it alongside the passageway leading from the Marine Sports Basin to the new dedicated boater's access in the YMCA building.

- Converted another 31,000 gsf of indoor, non-water-oriented recreation to Trust uses, including 10,000 gsf for cafes and restaurants and 21,000 gsf for retail;

- Substituted the 25,000 gsf of Family Food & Recreation Center (formerly "Bowling Center") with Trust-consistent retail; created extensive openings in the mezzanine floor from first floor corridors; adding viewing areas.

D. Northeast Wharf Plaza, Parking - The State Lands Commission did not request changes to the Northeast Wharf Plaza or to the Parking.

IV. NEXT STEPS

As noted, the State Lands approval of Trust-consistency is not the final approval required for this project. The Port Commission must make a determination as to the consistency of the project with its legislative Trust grant. The Commission must also take steps to invoke the new *Special Area Plan* process by seeking BCDC determination of Trust consistency. Additional regulatory requirements include completion of an Environmental Impact Report and its certification; approval of a Major Permit by BCDC; approval by the Commission of a lease disposition and development agreement and of a lease; and subsequent approval of the lease by the Board of Supervisors and other approvals, including design review. If the approvals extend past January 13, 2004, the current ERN will expire and the Port Commission may consider an extension or amendment to the ERN.

V. STAFF RECOMMENDATION

No action is required.

EXHIBIT A

STATE LANDS COMMISSION JUNE 2, 2003 STAFF REPORT

CALENDAR ITEM
47

A)	13	06/02/03 G 11-01
S)	8	P. Thayer

REQUEST BY THE STATE CONTROLLER TO EVALUATE A PROJECT ON PIERS 27-31, PORT OF SAN FRANCISCO, FOR CONSISTENCY WITH THE PUBLIC TRUST AND THE BURTON ACT

In recent months, the staff of the State Lands Commission ("Commission") has been working with the Port of San Francisco, the San Francisco Bay Conservation and Development Commission ("BCDC"), and SF Piers 27-31, LLC regarding a proposed development on Piers 27-31 on the San Francisco waterfront. SF Piers 27-31, LLC is a business entity of The Mills Corporation.

The project site lies on the Embarcadero approximately midway between the Ferry Building and Pier 39. It consists of a long bulkhead building fronting the Embarcadero and three large pier structures: Pier 27, a modern pier of little or no historic value, and Piers 29 and 31, both of which are historic and served the early bulk cargo trade for decades. The site lies mainly on pilings over San Francisco Bay, and is approximately 19 acres in size. The Port and the developer have applied to both state and federal authorities to have Piers 29 and 31, and their bulkhead building listed on the National Register of Historic Places.

The Commission administers the State's interest in tide and submerged lands granted by the Legislature to cities, counties, and other government entities. It also ensures that these public trust properties are used in compliance with the public trust and with the specific acts that placed their day-to-day administration in local hands. Public trust uses have been held by the California courts to include those uses which serve the statewide public in navigable waters, such as water-related commerce, navigation, and fisheries and, more recently, bathing, swimming, boating, recreation and environmental preservation.

The Commission has recently addressed public trust use issues in detail in considering the Queensway Bay development in the City of Long Beach. Its view of permissible public trust uses was expressed in a policy adopted by the Commission in September, 2001. In the case of San Francisco, the Commission has exercised its authority in connection with the approval of the lease for PacBell Park, and staff advice letters have been issued regarding several other publicly beneficial projects along the

San Francisco waterfront, such as the renovated Ferry Building, Pier 1, and Piers 1 ½-3-5.

The second source of Commission authority on the San Francisco waterfront stems from the "Special Area Plan" between the Port of San Francisco and BCDC, and later approved by the Legislature (through Chapter 489, Statutes of 2001). The Special Area Plan provides conditions for the repair and development of the derelict pier structures along the waterfront. Prior to the Special Area Plan, the existing BCDC standards for renovation and development of the derelict piers required that a project be for a water-oriented use, and that there be no alternative upland location available (Government Code Sections 66605 (a) and (b)). The Special Area Plan established a new standard: that a project may be approved if it is consistent with the public trust and with the Burton Act, the legislative enactment through which San Francisco was granted day-to-day administration of its port. The Special Area Plan also went a step further, by setting out a specific role for the State Lands Commission should the Port request that BCDC determine public trust and Burton Act consistency early in the life of a proposed project. In that case, the State Lands Commission, by letter from its Executive Officer, is to advise BCDC on these matters, and the advice is to be used by BCDC in making its determination of public trust consistency.

The Controller has asked that this matter be placed on the agenda to give the Commission the opportunity to review the project, and, should it choose, to make its own determination of consistency with the public trust and the Burton Act. Neither BCDC, the Port, nor the developer of the Piers 27-31 project has yet requested a trust consistency advice letter for this project. However, both the Port and the developer are considering using the "early review" of trust consistency that the Special Area Plan offers them. A request for an early review before BCDC is likely to be made prior to the date of the next State Lands Commission meeting.

The uses within the Piers 27-31 project are still being refined. Because it is too early for the developer to have lease commitments, the final uses are not yet known. Therefore, in providing direction, the State Lands Commission needs to describe potential uses in a manner that protects the public trust when those uses are later put in place by the developer and the Port, with the approval of BCDC. Further, there needs to be a means to ensure that the project as negotiated will be carried out, with the design authority and abilities of BCDC protected.

What follows is a description of the project as it had been prior to negotiations over the last several weeks with the developer and the Port. Following that, there will be a

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discussion of the changes recommended by State Lands Commission staff to bring the project into compliance with the public trust and the Burton Act. Then there will be a discussion of the changes in project design and uses made by the developer and the Port to address those recommendations.

In brief, the project, before the recent negotiations began, proposed the following uses in historic pier and bulkhead structures and in a new building. The locations of these uses and project configuration---the initial uses and configuration---are shown on Exhibit A to this calendar item:

- Conversion of Pier 31 almost completely to office space, and the creation of a second floor within the existing shed. Of the approximately 120,000 square feet available in a two-story conversion, 108,000 square feet were to be for offices and 12,000 square feet for the Boating Center, a museum, and a restaurant. The architectural elements of Pier 31 would lie entirely within second floor offices, other than a small portion above the restaurant space.

- Conversion of Pier 29 to the following uses, again in a two story conversion of the existing one story shed: on the ground floor, a restaurant, "recreational retail" of 31,500 square feet, a 25,000 square foot bowling center, other "indoor recreation" of uncertain use (but perhaps a yoga/spa center, indoor soccer, and batting cages), and several small retail sites. The upper floor would be for 75,000 square feet of offices. The public views of historic trusses would be limited to users of some of the indoor recreation and shoppers in the "recreational retail" space.

- A YMCA in a new 110,000 square foot purpose-built structure on two floors facing a public plaza on the south end of the site. The Y as proposed would include a wide variety of uses: a swimming pool, a lap pool and a therapy pool, a gymnasium with multiple courts for basketball, a rope climbing center and a "high adventure" center with a rock climbing wall facing the Embarcadero, a teen club with musical, theatrical, social, and computer activities, a child care center, a community meeting room, and a health and fitness center. Outside the Y, there would be a "Sports Valley" with a skate park/BMX track, volleyball, basketball and tennis courts, and an area for discharging vehicle passengers. The non-historic Pier 27 shed will be taken down to make way for the new YMCA.

- A marine sports basin between Piers 29 and 31 for recreational boating, in particular for the activities of America True. America True is a non-profit entity

that conducts youth sailing instruction through its "Learn-to-Sail" and "Community Sailing" programs. Improvements would be built to protect the sports basin from wave action. Other boaters will also use the sports basin. As a part of the project, there would be a Boating Center in Pier 31 and a Boating Kiosk near the Center. America True would train Y staff in boating instruction leading to the assumption of this program by the Y.

- Conversion of the bulkhead buildings along the Embarcadero to a mix of uses. The ground floor uses range from cafes and smaller retail to larger spaces for a marine sports retail store, "recreational retail," and "indoor recreation." The upper floors within the bulkhead building would be devoted to parking and offices.

- A new 104,000 square foot public plaza called the "Northeast Wharf Plaza," to the south of the YMCA, along with a public swimming dock. This public plaza is one of the major elements of the Special Area Plan that must be constructed by the Port in any event, and is therefore not a part of this project. However, the public plaza will be constructed earlier if this project goes forward. It will be located in part of the space currently occupied by the Pier 27 shed.

- A broad range of uses all along the perimeter of the project, including public walkways and boat docks for large and small craft, including transient berthing for visitors to the area.

The staff of the State Lands Commission, with commentary from BCDC staff and advice from the Office of the Attorney General, responded to the project plans. The response was in the form of broad-based suggestions to the Port and the developer of changes in the project to bring it into compliance with the public trust and the Burton Act, and with previously approved developments along the San Francisco waterfront. The staff of the Commission, with the advice of the Office of the Attorney General, has already recognized the importance of preserving federally-listed historic maritime structures along the San Francisco waterfront as places for the public to congregate and to enjoy architectural history. In several projects along the San Francisco waterfront, some non-trust office uses have been accepted by Commission staff as parts of restoration projects within historic buildings. However, the staff has required that there be substantial public trust uses within each historic structure, and that the architectural history being preserved within a federally-listed building be open to public viewing and enjoyment. Pier 1, the home of the Port of San Francisco, is an example of an

approved renovation project. The newly opened Ferry Building, with its public view of the 600-foot long nave and services for visitors on the ground floor, is another.

The design and projected uses of the project at Piers 27-31, as initially planned, were not in keeping with prior projects. The design and uses were predominantly based upon a development of private offices, "indoor recreation" of unspecified type, and "recreational retail." The Port and the attorneys for the developer have argued that the Burton Act and the Special Area Plan permit the use of lands along the San Francisco and over the water for a broad range of recreation uses with little or no tie to their waterfront location. Among the uses are bowling alleys and large-scale retail stores selling recreational goods and sports clothes. The staff and the Office of the Attorney General are of the opinion that neither the public trust generally, nor the Burton Act and the Special Area Plan in particular, supports the Port's and developer's position that all types of recreation and the sale of all types of recreational equipment are public trust uses.

The staff also expressed concern with the building of a new structure for a YMCA. The documentation supplied showed that this Y, although on the water, included facilities and activities much like other Y's on upland property. Many of the planned uses, such as the rope climbing area, the teen center, and the "high adventure" rock climbing wall, were not public trust activities, and had no substantiated use for public trust purposes. Many of the planned activities were to serve the local community's need for general recreation, and were planned based on a local survey. At the same time, there was an important connection between America True's sailing classes---a clear public trust activity--- and some of the areas within the Y.

The staff has provided recommendations to the developer and Port to make this project, its uses and design, consistent with the public trust and the Burton Act. Many of these changes are shown as crosshatched areas on Exhibit B. The recommendations were made in a general way to achieve public trust needs, leaving more precise design to the Port and the developer, with BCDC having final design approval:

- Increase public trust uses within Pier 31 by reducing the amount of private office on the ground floor. This would be done by eliminating ground floor offices from the bulkhead building waterward to the planned public passageway and substituting public trust uses in their place. This would allow for public visual access of the trusses within Pier 31 from the ground floor public areas and would make the building more than just a private office complex. To provide flexibility, the staff also suggested an alternative. It was that ground floor space be

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converted to public trust uses one-half of the way to the passageway, but with the elimination of a planned second floor of offices. Staff also recommended that the north-south public corridor through the middle of the building be widened, so that it would be better suited to public use, rather than functioning more as a private entry for office workers.

- Within Pier 29, convert the ground floor from the bulkhead building waterward to the Bowling Center to public trust uses. This would make the ground floor predominantly public trust space. It would also eliminate a 31,550 square foot recreational retail space within Pier 29 and some non-trust indoor recreation. The north-south public passageway was also to be expanded within Pier 29. As an alternative, staff suggested that the Bowling Center be eliminated and the space it had occupied converted to public trust uses.

- Strengthen the boating tie between the YMCA and America True, both by uses and by physical connection. For instance, the Y should be physically tied to the water basin by a safe and secure passageway to the water. Its boaters (who will often be young, wet, and cold) should not have to work their way back to the Y showers and lockers through shoppers. The middle passage in Pier 29 should be expanded and a short wall installed for boaters to return to the Y. The Boating Center should be housed in Pier 29, nearer to its users.

- Establish which rooms in the Y building are necessary for the teaching all of the classes related to boating, including certification of teachers, safety, and boating skills. Consolidate multiple rooms intended for local community use, unless there is a need to have the planned size for boating activities. Reduce the size of areas and activities not used in connection with, or only occasionally used in connection with, boating, such as the rock climbing and ropes centers.

In the past several weeks, the developer has proposed changes to the project in response to staff's suggested changes. Continued negotiations have been beneficial. Very recent changes to the project have brought it to a point where staff believes that it is compliant with the public trust. The major changes and clarifications are listed in summary form below, and the design and use changes are shown on Exhibit C. A list of most of the changes supplied by the developer is separately attached as Exhibit D. A summary of the changes is as follows:

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- Relocate the 3,000 square foot maritime museum in Pier 31 to a two-story area adjacent to the public passageway midway in the pier shed, and install a mezzanine in the museum (provided that another elevator is not required by the Americans with Disabilities Act). Enlarge the passageway and make changes to the elevator location to make the area more conducive to public use. This would open this portion of the pier structure to public viewing.

- Create a public corridor from the restaurant in Pier 31 to the public passageway beneath the cut out to the second story. This will give the public additional views of the historic pier structure. In addition to this passageway, there is an added public access from the marine basin to bring the public into the center corridor.

- Also in Pier 31, 5,800 square feet of non-trust office space on the north side of the pier will be converted to 3,200 square feet of maritime office space and 2,600 square feet of public trust office space or other public trust uses. On the south side of Pier 31, facing the boat basin, 7,400 square feet of non-trust office space will be replaced with public trust uses. Because of these changes and the relocated maritime museum, an area roughly equivalent to the ground level area of Pier 31 up to the passageway has been committed to public trust uses.

- In Pier 29, the 25,000 square foot bowling center will be eliminated. In its place, there will be public trust retail uses.

- In Pier 29, approximately 31,000 square feet of space planned as indoor recreation will be dedicated to trust uses. 10,000 square feet of this space will be for restaurants and cafes, and 21,000 square feet will be for trust-related retail.

- In Pier 29, widen the passageway and expand the elevator lobby midway in the Pier 29 shed. Dedicate a portion of the passageway to boaters using the marine sports basin and relocate the boating center from Pier 31 to Pier 29 adjacent to this dedicated passageway. Also in Pier 29, expand the second floor cut-out to reach the mid-pier passageway and the Embarcadero passageway. The cut-out previously over the restaurant east of the mid-pier passageway will be eliminated.

- At the Y, add another entrance near the south end of the mid-pier passageway to give the boaters more convenient access to the Y's facilities.

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- The Y and America True have described the use of various rooms within the Y for boating-related purposes ranging from physical training, to classroom space for multiple classes, to larger rooms for meetings of boaters. Significantly, several rooms within the Y will be available at least 51 % of the time for participants in boating and other water-oriented recreational activities, and for the use of other public groups such as environmental groups and groups focused on San Francisco Bay and Pacific Ocean preservation, fisheries, and recreation. The availability of these rooms for trust-related use will be disseminated to the public by the Y.

- The facilities within the rock climbing, rope climbing, and "Kid's Zone" rooms facing the Embarcadero will be modified to make them more amenable to use by America True and other boaters for boating related exercise and training. These rooms will offer ropes courses for mariners, a mast for climbing, and a sailing simulator. A part of one room facing the Embarcadero will contain sailing craft on a rotating basis for display and training. The changes made to the Y, in the staff's opinion, have made it a distinctive, boating and water-related Y, a public trust use, although some non-trust uses typical of more traditional Y's remain.

- Provide comprehensive signage to educate the public about the historical features of the piers and direct the public to open spaces, public exhibits and maritime activities.

- Within Pier 29, work with the lessee of the 31,500 square foot retail space to insure that the ceiling area is kept open to public view so that the public can see the trusses and other historical features of the building.

The goal of the staff has been to reduce the project's non-trust uses, increase its trust uses, and open to a greater extent the refurbished historical structures to the public. As stated above, the staff has permitted some non-trust uses in restored historical structures along the San Francisco waterfront provided that a significant portion of these structures has been dedicated to trust uses and that the preserved historical features of the buildings have been readily accessible to the public. With the changes which have been outlined here, and with provisions to assure that the public trust attributes of the project are protected, the staff is able to recommend this project to the Commission as trust-compliant.

OTHER PERTINENT INFORMATION:

1. Before its final approval, the Piers 27-31 project will be the subject of multiple approvals and opportunities for public participation. As a proposal to lease public trust lands in San Francisco, the Port will need to consider this project following a full review as required by the California Environmental Quality Act ("CEQA"). Through CEQA, the public will have an additional opportunity for participation. The project will also come before the San Francisco Board of Supervisors and BCDC, two additional opportunities for public participation.

2. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060 (c) (3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

   Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

APPROVALS OBTAINED:

N/A

FURTHER APPROVALS REQUIRED:

The Port of San Francisco, the Board of Supervisors of the City and County of San Francisco, the San Francisco Bay Conservation and Development Commission, the U.S. Corps of Engineers, the San Francisco Planning Department, and the Regional Water Quality Control Board

EXHIBITS (ATTACHED AND INCORPORATED BY REFERENCE):

A. February 26, 2003, Project Plan with Uses
B. Project Plan with Staff Recommended Changes
C. Amended Project Plan
D. List of Project Changes

PERMIT STREAMLINING ACT DEADLINE:

N/A

IT IS RECOMMENDED THAT THE COMMISSION:

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1. FIND THAT THE ACTIVITIY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060 (c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

2. FIND THAT THE AMENDED PROJECT PROPOSED BY THE DEVELOPER AND THE PORT FOR PIERS 27-31 IS CONSISTENT WITH THE PUBLIC TRUST AND THE BURTON ACT SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

   A. THE PLAN FOR THE PROJECT SHALL BE AS AMENDED AND SHOWN AND DESCRIBED IN THIS CALENDAR ITEM AND AMPLIFIED FURTHER IN EXHIBITS C AND D WHICH ARE ATTACHED TO THIS CALENDAR ITEM.

   B. THE PORT AND THE DEVELOPER ARE TO PROVIDE A CONTRACTUAL MEANS ACCEPTABLE TO STAFF AND THE OFFICE OF THE ATTORNEY GENERAL TO ALLOW THE COMMISSION TO MAKE CERTAIN THAT ELEMENTS IN THE PIERS 27-31 PROJECT WHICH ARE DESIGNATED AS PUBLIC TRUST USES WILL BE LEASED FOR THOSE USES. THIS WILL INCLUDE THE SMALL SCALE VISITOR-SERVING RETAIL SPACES AND OTHER PUBLIC TRUST USES WITHIN PIERS 29 AND 31 AND THE BULKHEAD BUILDING. THIS MAY BE ACHIEVED BY AGREEMENT AMONG THE PORT, DEVELOPER, AND THE COMMISSION. AS A PART OF THIS AGREEMENT, THE COMMISSION MAY BE MADE A THIRD PARTY BENEFICIARY TO THE PORT LEASE FOR THE PURPOSE OF ENABLING IT TO ENFORCE TRUST COMPLIANCE TERMS.

   C. FOR THE PURPOSES OF THE AGREEMENT AND LEASE REFERRED TO IN (B), THE DETERMINATION OF PUBLIC TRUST USES SHALL BE AS DESCRIBED IN THE COMMISSION'S POLICY STATEMENT OF SEPTMEBER 2001 AND THE ADVICE LETTER OF THE ATTORNEY GENERAL DATED MAY 5, 2003.

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3. AUTHORIZE THE EXECUTIVE OFFICER TO TAKE WHATEVER ACTION IS NECESSARY TO IMPLEMENT THE COMMISSION'S FINDINGS AND DIRECTIVES.

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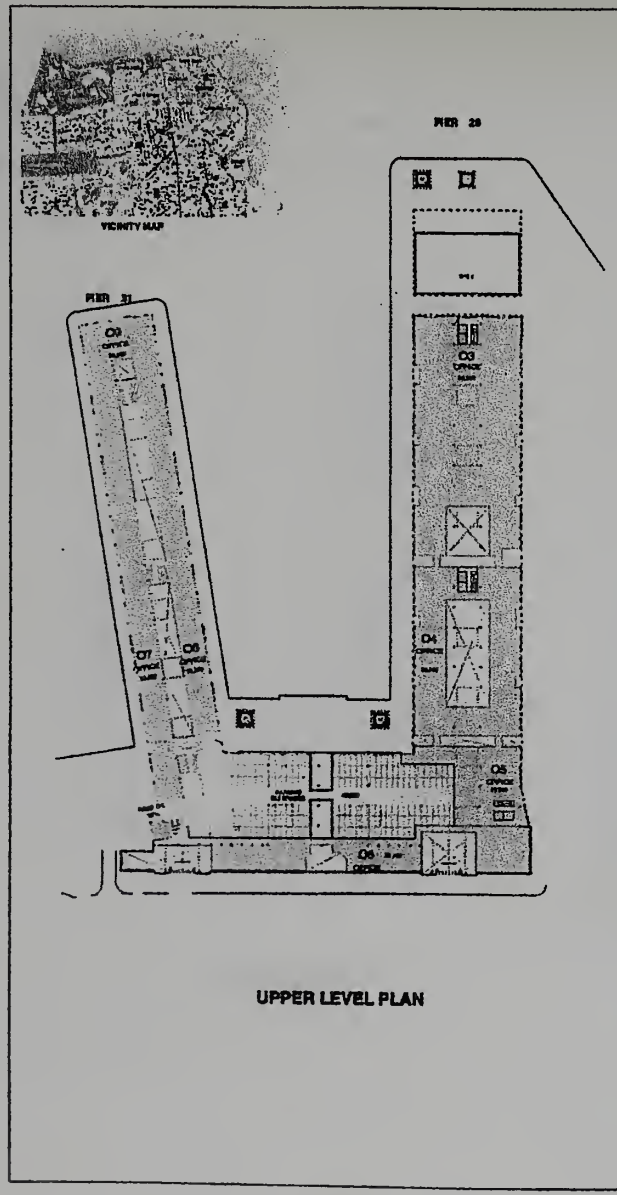
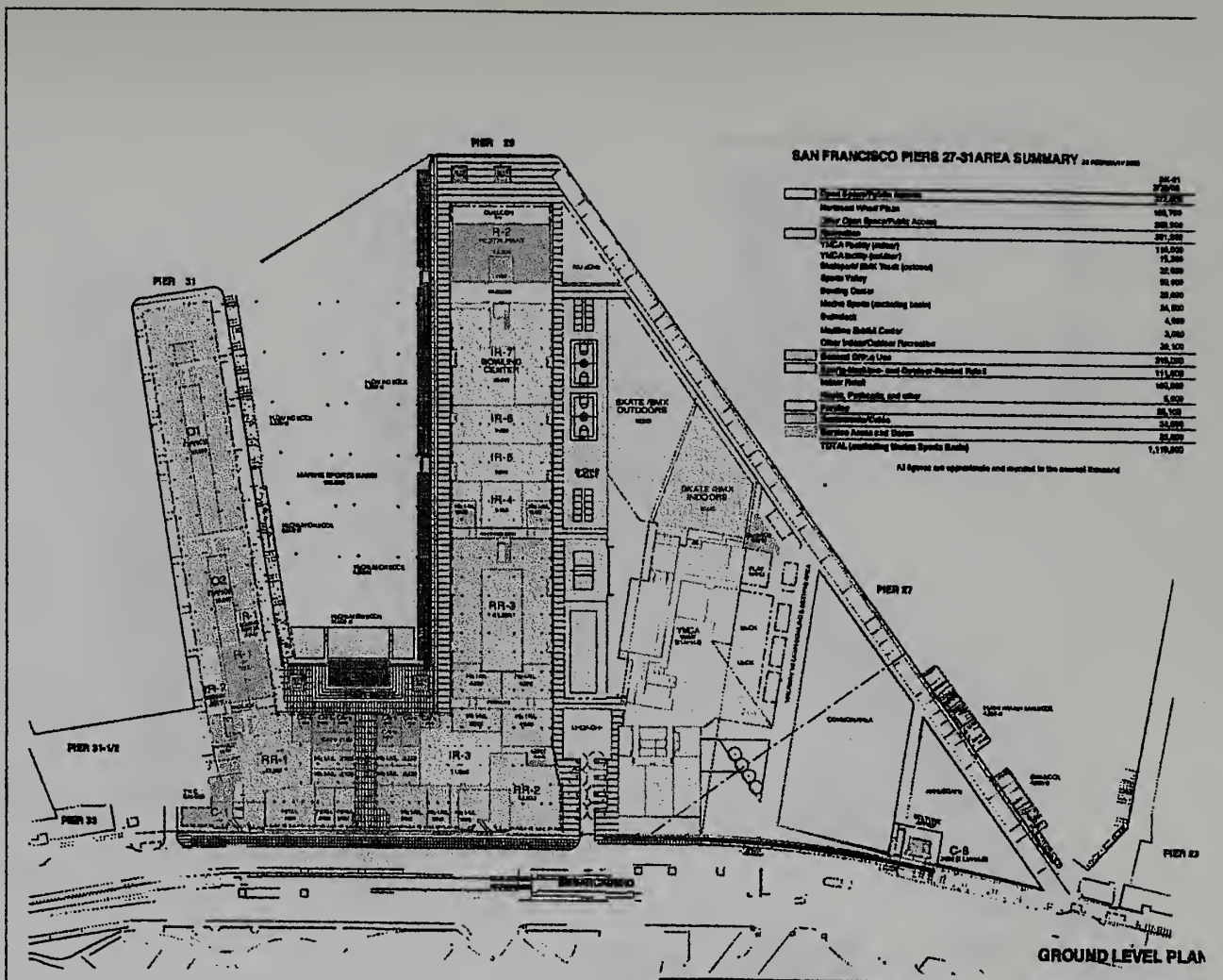




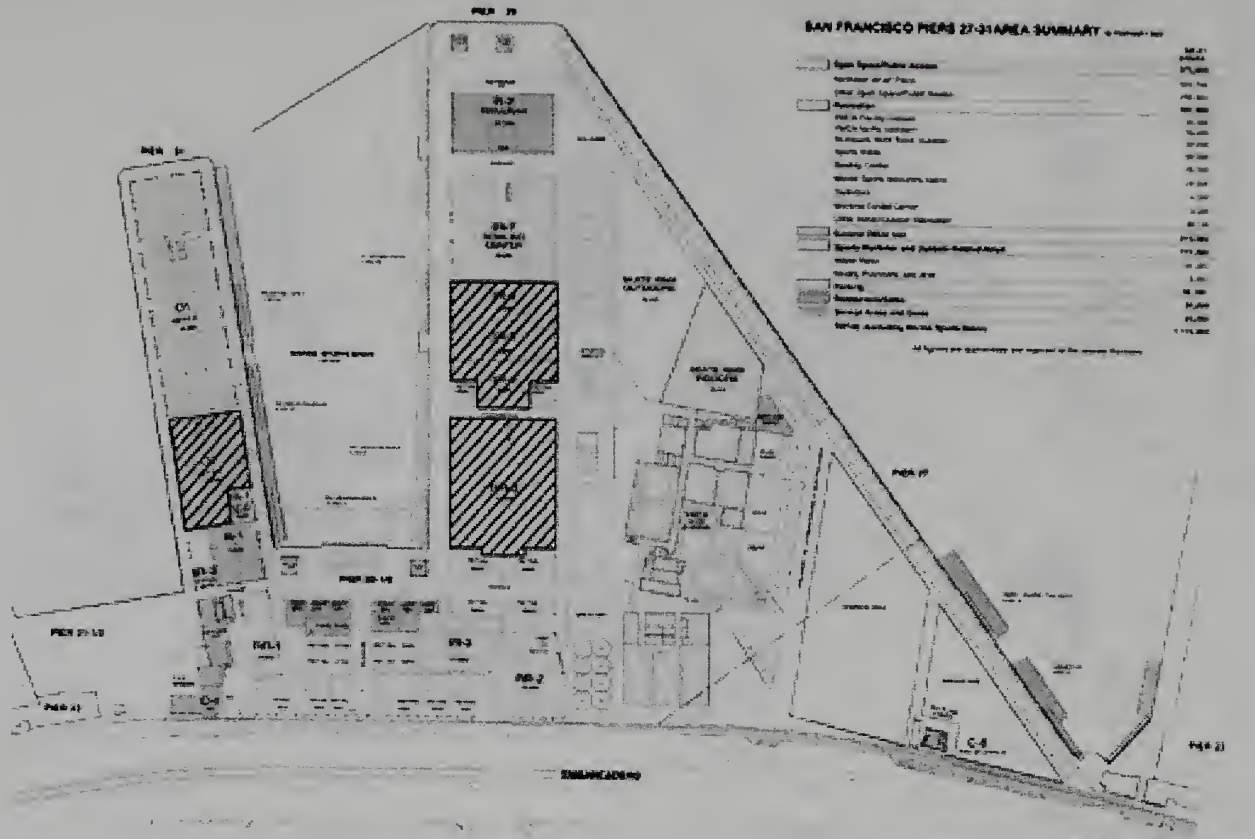
THE HILLS

PIERS 27-31

San Francisco Piers 27-31
Site Plan

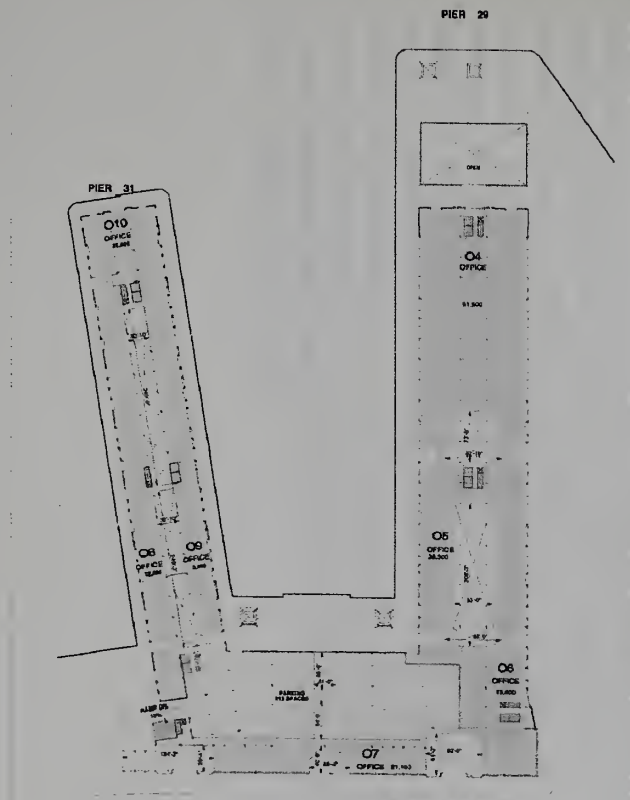
revised:

UPPER LEVEL PLAN



GROUND LEVEL PLAN

San Francisco Piers 27-31
Site Plan



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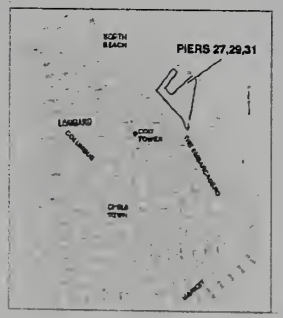

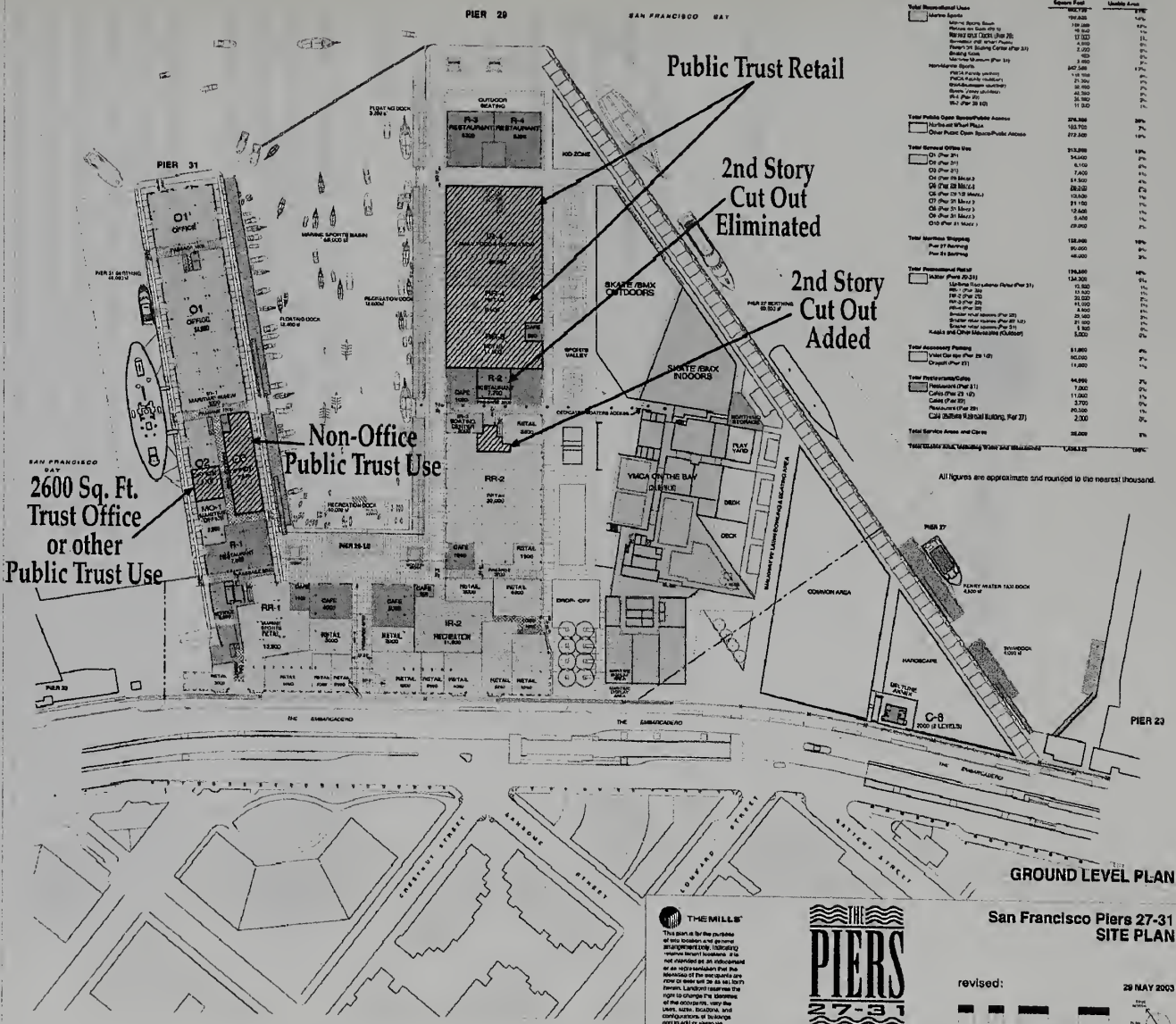

Piers 27-31 Mixed-Use Recreation Project – Project Components

	Square Feet	% Total Usable Area
Total Recreational Uses	190,000	10%
Marine Sports	190,000	10%
Non-Marine Sports	647,000	
Total Public Open Space/Public Access	276,000	29%
Total General Office Use	313,000	16%
Total Maritime Shipping	150,000	10%
Total Recreational Retail	196,000	
Total Accessory Parking	51,000	
Total Restaurants/Cafés	44,000	
Total Service Areas and Cores	35,000	2%

All figures are approximate and rounded to the nearest thousand.

THE MILLS

This plan is for the purpose of site location and general arrangement only, indicating relative tenant locations. It is not intended as an indication or an representation that the identities of the tenants are now or ever will be as set forth herein. Landlord reserves the right to change the identities of the occupants, vary the uses, sizes, locations, and configurations of buildings and to eliminate buildings and improvements.

THE PIERS 27-31
SAN FRANCISCO, CALIFORNIA

San Francisco Piers 27-31
SITE PLAN

revised: 29 MAY 2003

0 50' 100' 150' 200' 250'

THE MILLS

May 22, 2003

Hon. Paul D. Thayer
State Lands Commission
Executive Director
100 Howe Avenue, Suite 100–South
Sacramento, CA 95825-8202

Re: Piers 27–31

Dear Paul:

I want to thank you, Blake and the rest of the staff again for rolling up your sleeves and helping the Port, Mills and BCDC to resolve the outstanding issues for Piers 27–31. We have looked at this project with a fresh pair of eyes and believe that a lot of progress has been made.

Since a lot of conversations and meetings have occurred over the last two weeks, I thought it would be appropriate to recap the changes we have made based upon input from State Lands staff as well as BCDC. With respect to Piers 29 and 31, as we understand it, you are primarily concerned that the project provides appropriate public access to the historic features of these resources, and that the structures themselves include an appropriate balance of trust uses to incidental non-trust uses. As the recap below shows, we have made significant changes in the uses and design of Piers 29 and 31 to address these primary concerns. While our concern for the integrity and success of the project as a whole does not allow us to make all of your suggested design and use changes, we strongly believe that our proposed changes result in a project that places substantial trust uses in each structure, and gives the public unprecedented opportunities to appreciate the exterior and interior historic features of these resources. This is particularly true when the Piers 29, 29.5 & 31 complex is viewed as a single historic building, which is the approach taken by the California State Historic Preservation Office and the National Park Service Office of Historic Preservation.

THE MILLS

With respect to the YMCA, we understand your concern that it be a unique facility primarily designed to take advantage of its waterfront location and to serve the needs of waterfront users. While we strongly believe that the YMCA facility has been designed and will be programmed to fully take advantage of its waterfront location and serve Bay-oriented recreation uses, we perhaps have not described this unique facility adequately to underscore that connection. As discussed below and in the separate submittal that accompanies this letter, we have made some changes in the YMCA building and are able to more fully explain the facility and programs that will make this a true water-oriented and water-enhanced YMCA.

We are encouraged by the great progress that has been made, by my quick estimation we have converted 37,000 sf. of non–trust space to trust uses and look forward to a favorable response from the staff prior to the State Lands Commission meeting on June 2, 2003.

Recap of Changes Made to the Piers 27–31 Project

1. Maritime Museum (Pier 31) relocated to the mid–crosswalk per exhibit "A"
   - — Take advantage of two story space @ crosswalk
   - — Vestibule added as gathering space and room for information plaque
   - — Glass storefront along museum wall adjacent to crosswalk (allow views up into two story structure)
   - — Encourages public access and viewing into historic structure
   - — Way finding signage off of Embarcadero to encourage public viewing
   - — Station # 8 of historic walk relocated to vestibule area
   - — Increased opening in second story above relocated maritime museum to increase view into "Historic Structure" in Pier 31
2. Pier 31. Mid–point corridor added per exhibit "B".
   - — Corridor to extend from north wall of Restaurant to elevator lobby directly below two story cutout. We will also widen the elevator lobby to improve the view through the lobby and into the Museum.
3. Due to the additional public corridor located in Pier 31, the "office space" has been reduced by 6,000 sf. to 216,000 sf.(Net)
4. YMCA/America True a dedicated passageway for boaters has been located directly opposite "Boating Center" in Pier 29.
5. YMCA/America True have agreed to give preference to boating functions, meetings, training, etc. in YMCA building. The exact program requirements and scheduling of these activities will be based upon enrollment and Dawn Riley "America True" input.
6. YMCA/America True in their normal marketing program will promote this location as a "Boating Center" to help encourage public participation.

THE**MILLS**

7. Boating center was relocated from Pier 31 to the Mid–Crosswalk of Pier 29
   — Created a dedicated passage for Boaters directly adjacent to YMCA dedicated boating link as well as making a stronger connection to the YMCA building
   — This will also allow the "Dock Master" to have better access in order to properly manage the "Marine Basin"
8. Replaced 21,000 sf. of Indoor rec. with "Trust uses" – 10,000 sf. of restaurants, food & café; 11,000 sf. of "Trust" retail or maritime activities
9. At Pier 29 widen the center passageway which is directly adjacent to boating center
10. Increased size of vestibule in passageway in Pier 29 adjacent to boating center to improve boater circulation and to allow for "Historic Information" plaque
11. Mills will agree to include the following design standards in office leases
    i. Wherever possible and when code allows the two story cutouts will be enclosed with a glass storefront to improve viewing into structure. Minimal size mullions will be specified.
    ii. Whenever possible and when code allows any demising wall that abuts glazed "cutout" opening will have a minimum of a two foot wide glass window where the wall meets the "cutout"
12. Boating kiosk was relocated to east side of marine basin in order to decrease distance between boating center and YMCA
13. A comprehensive signage program will be incorporated into the project in order to educate, inform and direct the public to various open spaces, boating and maritime activities. Mills will agree to include this information on property directories.
14. Further consideration of adding an area on the 2nd floor of the Beltline Building for education and gathering related to water activities.
15. Further consideration to add a service facility to support The Port's Maritime Division – equipment storage area adjacent to the service core to assist with extensive berthing program. This matter needs further review to insure proper functioning.

THEMILLS

Additional changes based upon May 20th conference call

1. Elevator lobby corridor directly opposite Maritime museum in Pier 31 to be widened to 15' to allow better viewing into two story space
2. IR–4 (Approx. 9,800sf.) to be converted from indoor recreation to "Trust" retail or other marine boating activities. (Trust retail as is at other Piers along the waterfront).
3. Elevator lobby corridor in Pier 29 adjacent to "Boating Center" shall be extended south to Northern edge of two story cut out. This will allow public to view second story space from lobby area.
4. Information plaques shall be installed at all five crosswalks in order to educate, inform and direct public about the historic piers
5. RR–1 entrance off the Embarcadero shall incorporate as much of the two story space as possible
6. Specific areas within the new YMCA building will be more clearly designated towards their water-oriented function, including the Nautical Center and the Cal Teen Boat Club. (A separate description of how this room will be programmed as well as other physical and programming changes will be sent under separate cover.)
7. We will agree to work with the RR–2 tenant as well as others to help insure that the two-story space is incorporated in the overall design of the space. To insure the overall success of the project it is essential to keep the smaller retailers where they currently exist. Furthermore, by locating tenant RR–2 where we have it, will allow us to successfully lease the other trust retail just north of RR–2. Tenant RR–2 will be the draw to attract the other uses.
8. As part of its normal marketing program Mills will include information and descriptions of the various maritime activities that will be occurring on Piers 27–31 in order to help educate, inform and direct the public to these "Maritime" facilities.
9. We will agree to place a small second level mezzanine in the Maritime museum as long as ADA requirements do not require us to install another elevator.
10. Mills will agree to locate a café somewhere in the Bulkhead of Pier 29.

THE MILLS

Finally, since we have made substantial changes to the project due to State Lands staff input and suggestions, it was agreed to that both the Controllers Office and State Lands staff would accompany us as we go back to obtain stakeholder and community approval.

I will be traveling this Thursday and Friday so please feel free to leave me a voice mail or email if you have any questions.

I look forward to a successful conclusion to the outstanding issues.

Sincerely,

Steven J. Jacobsen
Executive Vice President
Development

cc: C. Aronberg,
B. Stevenson
D. Plummer
J. Eigerman
S. Kay
M. Bolsinger
D. Riley
B. Rhett
D. Wong
L. Swanson
N. Sekhri,
W. Travis
C. London
C. Van Osten
R. Achtenberg

May 29, 2003

Hon. Paul D. Thayer
State Lands Commission, Executive Director
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

Re: May 29, 2003 Revisions to San Francisco Piers 27-31 Project

Dear Paul,

Here is a summary of the revisions to the project we discussed today. We recognize that the Attorney General has reviewed each pier individually. However, we wish to reiterate that the National Park Service has formally determined that the historic maritime complex at Piers 29, 29½ and 31 is a single structure. The pier substructures were built at the same time, followed by the sheds, and, shortly thereafter, the bulkhead buildings. Historically, there were no interior walls dividing up the space at all, but a unified U-shaped complex spanning from Pier 29, to Pier 29 ½ to Pier 31. The Port leased to single maritime tenant, most significantly the Luckenbach shipping company.

We feel very strongly that when regarded as a whole, our project is consistent with the Public Trust Doctrine. That said, our team and your staff have worked hard during the past several months and sleeplessly during the past few weeks to improve the ratio of public trust uses to non-public trust uses on a pier-by-pier basis. Assuming that the piers must be reviewed individually, we believe that you will agree that we have made considerable progress at each pier. In this letter, I have documented the most recent changes by pier, moving north to south: Pier 31, 29½, 29 and YMCA (Pier 27).

Pier 31

As we discussed just yesterday, we have continued to reconfigure and reduce ground-floor general office space at Pier 31 in favor of public trust uses, such as public passageways that will improve the public's access to every corner of the historic structure. In addition, we have now reduced the amount of general office space from 219,000 square feet to 209,800 square feet, as shown on the site plan we emailed to you earlier today. The new site plan differs from the previous one as follows:

- Elimination of 1,800 square-feet of office space to create a new public passageway through the end of the Pier 31 Shed. We have also cut new two-story space above this passageway for the enjoyment of the public.

- Elimination of 5,700square feet of office space to create a new public passageway running east-west to connect public spaces at the front and rear of the Pier 31 Shed. There is already two-story space above this passageway.
- Elimination of 3,200 square feet of general office space to create 3,200 square feet of trust-related office space. We intend to lease this space to an excursion vessel operator using the 48,000 square foot berth we will build at Pier 31.

In addition, the Mills Corporation will commit to market all remaining ground-floor office space at Pier 31 (47,400 sq. ft.) to trust-related office users, and to limit subleases of such space to non-trust-related office tenants to no more than 10 years. If trust-related tenants are not able to lease the space at its market rate, the sublandlord will then turn to non-trust-related office users.]

Even assuming that no more than 3,200 square feet can be subleased to a trust-related office user, the net result of these changes is that 83% of the ground level of Pier 31 is now dedicated to public trust uses, as shown below:

Ground-Level Spaces at Historic Pier 31

	Total	Trust
Pier 31 Aprons	41,900	41,900
Floating Dock	12,300	12,300
O1 Office	34,000	-
Public Passageway	1,800	1,800
Pier 31 Berthing	48,000	48,000
IR-1 Maritime Museum	3,000	3,000
Public Passageway	1,700	1,700
Marine Sports Basin*	84,000	84,000
O2 Office	6,000	-
MO-1 Office	3,200	3,000
Public Passageway	3,000	3,000
O3 Office	7,400	-
R-1 Restaurant	7,000	7,000
Public Passageway	2,000	2,000
Service	6,200	6,200
RR-1 Marine Sports Retail	13,900	13,900
Retail	5,000	5,000
Lobby	900	900
Retail	3,000	3,000
Parking Ramp	600	600
All Spaces	**284,900**	**237,500**
	Trust:Total=	**83%**

*Half of the basin is assigned to Pier 31.

Pier 29 ½

Consonant with our discussions yesterday, we have not made any changes to the proposed spaces at Pier 29 ½. For your reference, 86% of the ground-floor space at this pier will be dedicated to trust uses, as shown in the following table:

Ground-Level Spaces at Historic Pier 29.5

	Total	Trust
Pier 29.5 Aprons	18,100	18,100
Recreation Dock	10,000	10,000
Boating Kiosk	625	625
Retail Kiosk	625	625
IR-2 Recreation	11,000	-
Retail	2,500	2,500
Café	600	600
Café	5,000	5,000
Retail	2,500	2,500
Retail	5,000	5,000
Retail	3,000	3,000
Public Passageway	6,700	6,700
Café	4,000	4,000
Café	1,400	1,400
Retail	3,500	3,500
Retail	2,500	2,500
Retail	2,000	2,000
All Spaces	**79,050**	**68,050**
	Trust:Total=	**86%**

Pier 29

We do not wish to gloss over your concerns about the 30,000 square-foot sporting goods retail space at Pier 29. However, as we have discussed, the presence of such a small "anchor" retailer is crucial to attracting the smaller retailers to the site. Let me note here again, that all retail at the site will be visitor-serving, trust-consistent retail. However, even assuming that the 30,000 square foot sporting goods store will be "non-trust," 81% of the ground level of Pier 29 will be dedicated to trust uses, as shown in the following table.

Ground-Level Spaces at Historic Pier 29

	Total	Trust
Pier 29 Aprons & Outdoor Seating	52,570	52,570
Kiosks	1,250	1,250
R-3 Restaurant	6,300	6,300
R-4 Restaurant	6,300	6,300
Service	1,611	1,611
Floating Dock	3,200	3,200
Public Passageway	5,200	5,200
Public Lobby		-
Elevator Core		-
Family Food & Recreation IR-4	25,000	0
Recreation Dock	12,000	12,000
RR-4 Retail	9,600	9,600
Café	800	800
RR-3 Retail	11,000	11,000
R-2 Restaurant	7,700	7,700
Public Passageway	3,600	3,600
IR-3 Boating Center	2,000	2,000
Marine Sports Basin**	84,000	84,000
Retail	3,200	3,200
RR-2 Retail***	30,000	4,500
Café	1,900	1,900
Retail	1,900	1,900
Public Passageway	3,200	3,200
Retail	3,000	3,000
Retail	4,900	4,900
Lobby	1,400	1,400
Retail	6,250	6,250
Retail	6,250	6,250
Retail	4,000	4,000
All Spaces	**298,131**	**247,631**
	Trust:Total=	**81%**

*Approx. 50% will be dedicated to restaurant use and amusements.

**Half of the basin is assigned to Pier 29.

YMCA Facility

Based on our recent discussions with you, the YMCA of San Francisco has agreed to give first priority in scheduling to maritime groups wishing to use the various areas within its new building. To clarify, the developer will be bound under the lease, and, in turn, will bind the YMCA through its sublease, to first attempt to schedule activities by marine recreation groups in building areas before reserving such areas for non-marine recreation groups. The purpose is to ensure that the "YMCA on the Bay" remains focused on marine recreation first, foremost, and in the majority of its spaces.

To that end, we have also changed the configuration and programming within the "Gangway," "Climbing Center/High Adventure Center" and "Soft Landings," and added a new area called the "Maritime Display Area," which we discussed yesterday.

Gangway: Adjacent to the Facility's public lobby for easy access, the Gangway is a multi-use area designed for registration and staging of incoming boating and recreational students. In addition, the YMCA has agreed to open this space to maritime workers using the nearby Pier 27 berth. *Only* when the Gangway is unneeded by marine recreational or maritime workers, it may also be used as a meeting room or staging area for other groups. The Gangway is truly the launching spot for all maritime activities at the Piers 27-31 Project.

Climbing Center/High Adventure Center. With large windows to The Embarcadero, these two centers are designed to be highly visible to people using Herb Caen Way and the new Northeast Wharf Plaza that we will build. The climbing center is ideal for the physical training of sailors who work the front of racing sailboats. A sailboat mast will be installed front and center and used for practice climbing. Self-climbing harness rigs, winches, and bosun's chairs will be rigged for physical training and to instruct students and the boating public on the proper and safe way to work aloft. The climbing center mimics modern racing sailboat activities and the High Adventure Center is more in keeping with traditional tall ship sailing. The ropes courses will be invaluable for those wanting to go aloft to unfurl the cotton sails from wooden arms – a key component of tall-ship sailing. Both of these areas will be used by all sailing students from the marine basin as well as groups like the Tall Ship Semester at Sea Program and others who want safe boating-aloft instruction and practice. Again, Marine sports groups/activities have *first priority* in using these centers.

Maritime Display Area: The third glassed in space along the Embarcadero will be used for rotational displays of featured boats and kayaks. This area will allow for the public and casual passer-by to realize immediately that this is no 'traditional YMCA', but rather this is the "YMCA on the Bay" with a real connection to the San Francisco waterfront. The type of vessels used in the marine basin will be rotated into this space so potential boaters can see, touch and climb on the boats. Other fleets will be invited to showcase their class boat as well, for instance the Hobie Cats or the International One Design Fleet. Olympic athletes will also be

invited to use this area and participate in "talent showcases" where they can promote their campaigns.

Soft Landings: Located behind the Marine Educational Display Area is a soft-scaped area that is perfect for windsurfing and sailing simulators and other activities that need this manner of protection. This area will be used by the sailing students on inclement days and for individual competitive sailors trying to improve their hiking endurance and sailing skills.

I look forward to speaking with you tomorrow. I will happy to answer any questions at that time.

Sincerely,

Steven J. Jacobsen
Executive Vice President
Mills Corporation

EXHIBIT B

STATE LANDS COMMISSION SEPTEMBER 29, 2001 POLICY DOCUMENT

CALENDAR ITEM

88

A)
) Statewide
S)

08/29/01

CONSIDER ADOPTION OF POLICY STATEMENT RELATING TO THE PUBLIC TRUST DOCTRINE

At its last meeting, the Commission requested information and guidance on the Public Trust Doctrine and the role the Commission plays in administering the Public Trust. The Commission was particularly concerned about what uses of Public Trust lands are permissible and what uses of these lands are impermissible under the Public Trust Doctrine. The Commission also directed staff to prepare an informative statement that it could adopt that would help Public Trust lands grantees, lease applicants and the public understand how the Public Trust Doctrine applies to granted and state-owned Public Trust lands.

In response, staff submits to the Commission three different resources on the Public Trust, all of which focus on the uses to which Public Trust lands may be put -- as this was the Commissioners' principal concern. The first (Exhibit A) is a policy paper setting forth a statement for administration of Public Trust lands. This has been drafted for adoption by the Commission as a reference paper on uses of Public Trust lands. The second (Exhibit B) is a paper prepared by the Attorney General's Office discussing Public Trust law, with particular emphasis on what the courts have found to be proper trust uses in the past and what can be gleaned from case law regarding proposals for new and different uses for Public Trust lands. Third, Jan Stevens, a retired Assistant Attorney General and writer, lecturer and recognized expert on the Public Trust Doctrine, will provide a brief oral presentation and will respond to questions from the Commissioners.

To briefly summarize, tide and submerged lands and the beds of lakes, streams and other navigable waterways are held in trust by the State for the benefit of the people of California and are to be used to promote the public's interest in water dependent or oriented activities including but not limited to commerce, navigation, fisheries, environmental preservation and recreation. The Commission is the steward of the State's Public Trust lands. It has administrative jurisdiction over Public Trust lands that have been retained by the State, and it has oversight authority over trust lands granted by the Legislature to local governments. The Commission acts pursuant to legislative direction and the Public Trust Doctrine to protect the public's interest in its trust lands. Among the Commission's duties in protecting the public's interest in these lands is

ensuring that the uses to which these lands are put are compatible with the Public Trust Doctrine.

The Public Trust as a common law doctrine that is not static but is continuously evolving. There are traditional uses, such as harbors and marinas, that are accepted trust uses. There are uses, such as private residences, that are just as clearly inappropriate. There are uses, such as oil production operations and pipeline rights of way that may not at first appear appropriate, but the courts have determined may be acceptable uses if determined to be compatible with trust needs. There are few categorical rules beyond the courts' admonitions and the Legislature's mandates to the Commission and to local government grantees, and these mandated provisions are sometimes amorphous.

These materials and presentation are intended to assist the Commission in exercising its discretion as each specific factual situation arises. The Commission's adoption of a general policy statement will provide assistance to potential Public Trust land users and grantees of trust lands.

In implementing the Commission's decision, staff will investigate and provide information to the Commission concerning the other factors for the Commission to consider on a project by project basis. The Commission will harmonize the Public Trust Doctrine with other legal requirements. These include the Coastal Act, the California Environmental Quality Act, etc. In determining whether a proposed use is consistent with the Public Trust Doctrine and in the best interest of the state, the Commission will also consider the views of various public groups, business and other relevant sectors of California society.

EXHIBITS

A. Public Trust Doctrine Policy Paper
B. Public Trust Legal Principles

RECOMMENDATIONS

IT IS RECOMMENDED THAT THE COMMISSION:

1. ADOPT THE GUIDANCE POLICY STATEMENT ON THE PUBLIC TRUST DOCTRINE ATTACHED AS EXHIBIT A.

2. DIRECT STAFF TO ASSIST AND COOPERATE WITH LOCAL TRUSTEES, WHICH MANAGE TRUST LANDS PURSUANT TO LEGISLATIVE GRANTS, TO ASSURE THE LOCAL TRUSTEES COMPLIANCE WITH THE GRANTING STATUTES AND THE PUBLIC TRUST DOCTRINE.

Exhibit A

PUBLIC TRUST POLICY

For

The California State Lands Commission

The Legislature has given the California State Lands Commission authority over California's sovereign lands – lands under navigable waters. These are lands to which California received title upon its admission to the Union and that are held by virtue of its sovereignty. These lands are also known as public trust lands. The Commission administers public trust lands pursuant to statute and the Public Trust Doctrine – the common law principles that govern use of these lands.

Public Trust Doctrine

The Public Trust Doctrine is set forth in common law. Several of its guiding principles are that:

I. Lands under the ocean and under navigable streams are owned by the public and held in trust for the people by government. These are referred to as public trust lands, and include filled lands formerly under water. Public trust lands cannot be bought and sold like other state-owned lands. Only in rare cases may the public trust be terminated, and only where consistent with the purposes and needs of the trust.

II. Uses of trust lands, whether granted to a local agency or administered by the State directly, are generally limited to those that are water dependent or related, and include commerce, fisheries, and navigation, environmental preservation and recreation. Public trust uses include, among others, ports, marinas, docks and wharves, buoys, hunting, commercial and sport fishing, bathing, swimming, and boating. Public trust lands may also be kept in their natural state for habitat, wildlife refuges, scientific study, or open space. Ancillary or incidental uses, that is, uses that directly promote trust uses, are directly supportive and necessary for trust

uses, or that accommodate the public's enjoyment of trust lands, are also permitted. Examples include facilities to serve visitors, such as hotels and restaurants, shops, parking lots, and restrooms. Other examples are commercial facilities that must be located on or directly adjacent to the water, such as warehouses, container cargo storage, and facilities for the development and production of oil and gas. Uses that are generally not permitted on public trust lands are those that are not trust use related, do not serve a public purpose, and can be located on non-waterfront property, such as residential and non-maritime related commercial and office uses. While trust lands cannot generally be alienated from public ownership, uses of trust lands can be carried out by public or private entities by lease from this Commission or a local agency grantee. In some cases, such as some industrial leases, the public may be excluded from public trust lands in order to accomplish a proper trust use.

III. Because public trust lands are held in trust for all citizens of California, they must be used to serve statewide, as opposed to purely local, public purposes.

Commission Authority

The Legislature has granted general authority to the Commission to manage trust lands. Unless otherwise expressly stated in the State Constitution or statutes, the public trust doctrine mandates the criteria for Commission management of trust lands. In carrying out its management responsibilities, the Commission commonly leases trust lands to private and public entities for uses consistent with the doctrine. Subject to the criteria in statutes and case law, the Commission may also exchange public trust lands for non-trust lands, lift the trust from public trust lands, enter into boundary line agreements, and otherwise generally manage trust lands. While most of the authority over public trust lands possessed by the Legislature is vested in the Commission, the Legislature, as the people's elected representatives, has not delegated the authority to modify uses permitted on public trust lands by the Public Trust Doctrine. There are times when the Legislature, exercising its retained powers, enacts laws dealing with public trust lands and uses for specified properties. This may include, in limited circumstances, allowing some non-trust uses when not in conflict with trust needs, in order to serve broader public trust purposes.

Implementation by the Commission of the Public Trust Doctrine.

The Commission implements the Public Trust Doctrine through careful consideration of its principles and the exercise of discretion within the specific context of proposed uses. Factors such as location, existing and planned surrounding facilities, and public needs may militate in favor of a particular use in one area and against the same use in another. The Commission applies the doctrine's tenets to proposed projects with consideration given to the context of the project and the needs of a healthy California society, to meet the needs of the public, business and the environment. The Commission may also choose among competing valid trust uses. The Commission must also comply with the requirements of other applicable law, such as the California Environmental Quality Act. In administering its trust responsibilities, the Commission exercises its discretionary authority in a reasoned manner, accommodating the changing needs of the public while preserving the public's right to use public trust lands for the purposes to which they are uniquely suited.

Relationship of the Commission to Granted Lands

The Legislature has granted certain public trust lands to local governments for management. A grantee must manage trust lands consistent with its own granting statutes and the Public Trust Doctrine. The Legislature has retained for the state, by delegating to the Commission, the power to approve land exchanges, boundary line agreements, etc.

The State Lands Commission exercises oversight over all granted lands. Generally, this means the Commission carries out this responsibility by working cooperatively with grantees to assure that requirements of the legislative grants and the Public Trust Doctrine are carried out and to achieve trust uses. The Commission monitors and audits the activities of the grantees to insure that they are complying with the terms of their statutory grants and with the public trust. With a few exceptions, grantees are not required to secure approval from the Commission before embarking on development projects on their trust lands nor before expending revenues generated from activities on these lands. However, where an abuse of the Public Trust Doctrine or violation of a legislative grant occurs, the Commission can advise the grantee of the abuse or

violation; if necessary, report to the Legislature, which may revoke or modify the grant; or file a lawsuit against the grantee to halt the project or expenditure.

Exhibit B

The Public Trust Doctrine

I. Origins of the Public Trust

The origins of the public trust doctrine are traceable to Roman law concepts of common property. Under Roman law, the air, the rivers, the sea and the seashore were incapable of private ownership; they were dedicated to the use of the public.[1] This concept that tide and submerged lands are unique and that the state holds them in trust for the people has endured throughout the ages. In 13th century Spain, for example, public rights in navigable waterways were recognized in *Las Siete Partidas*, the laws of Spain set forth by Alfonso the Wise.[2] Under English common law, this principle evolved into the public trust doctrine pursuant to which the sovereign held the navigable waterways and submerged lands, not in a proprietary capacity, but rather Aas trustee of a public trust for the benefit of the people@ for uses such as commerce, navigation and fishing.[3]

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[1]Institutes of Justinian 2.1.1.

[2]Las Siete Partidas 3.28.6 (S. Scott trans. & ed. 1932).

[3]*Colberg, Inc. v. State of California ex rel. Dept. Pub. Works* (1967) 67 Cal.2d 408, 416.

After the American Revolution, each of the original states succeeded to this sovereign right and duty. Each became trustee of the tide and submerged lands within its boundaries for the common use of the people.[4] Subsequently admitted states, like California, possess the same sovereign rights over their tide and submerged lands as the original thirteen states under the equal-footing doctrine.[5] That is, title to lands under navigable waters up to the high water mark is held by the state in trust for the people. These lands are not alienable in that all of the public=s interest in them cannot be extinguished.[6]

II. Purpose of the Public Trust

The United States Supreme Court issued its landmark opinion on the nature of a state=s title to its tide and submerged lands nearly 110 years ago, and although courts have reviewed tidelands trust issues many times since then, the basic premise of the trust remains fundamentally unchanged. The Court said then that a state=s title to its tide and submerged lands is different from that to the lands it holds for sale. AIt is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing@ free from obstruction or interference from private parties.[7] In other words, the public trust is an affirmation of the duty of the

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[4]*Martin v. Waddell* (1842) 41 U.S. (16 Pet.) 367, 410.

[5]*Pollard=s Lessee v. Hagen* (1845) 44 U.S. (3 How.) 212, 228-29.

[6]*People v. California Fish* Co. (1913) 166 Cal. 576, 597-99; *City of Berkeley v. Superior Court* (1980) 26 Cal.3d 515, 524-25.

[7]*Illinois Central R.R. Co. v Illinois* (1892) 146 U.S. 387, 452.

state to protect the people=s common heritage of tide and submerged lands for their common use.[8]

[8]*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 441.

But to what common uses may tide and submerged lands be put? Traditionally, public trust uses were limited to water-related commerce, navigation, and fishing. In more recent years, however, the California Supreme Court has said that the public trust embraces the right of the public to use the navigable waters of the state for bathing, swimming, boating, and general recreational purposes. It is sufficiently flexible to encompass changing public needs, such as the preservation of the lands in their natural state for scientific study, as open space and as wildlife habitat. The administrator of the public trust Ais not burdened with an outmoded classification favoring one mode of utilization over another.@[9]

The Legislature, acting within the confines of the common law public trust doctrine, is the ultimate administrator of the tidelands trust and often may be the ultimate arbiter of permissible uses of trust lands. All uses, including those specifically authorized by the Legislature, must take into account the overarching principle of the public trust doctrine that trust lands belong to the public and are to be used to promote public rather than exclusively private purposes. The Legislature cannot commit trust lands irretrievably to private development because it would be abdicating the public trust.[10] Within these confines, however, the Legislature has considerable discretion.

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[9]*Marks v. Whitney* (1971) 6 Cal.3d 251, 259-260.

[10]*Illinois Central Railroad v. Illinois, supra,* at 452-53.

The Legislature already may have spoken to the issue of the uses to which particular tide and submerged lands may be put when making grants of these lands in trust to local government entities. Statutory trust grants are not all the same Csome authorize the construction of ports and airports, others allow only recreational uses and still others allow a broad range of uses.

A further and often complicating factor is that granted and ungranted lands already may have been developed for particular trust uses that are incompatible with other trust uses or may have become antiquated. Some tidelands have been dedicated exclusively to industrial port uses, for example, and in these areas, recreational uses, even if also authorized by the trust grant, may be incompatible. Similarly, tidelands set aside for public beaches may not be suitable for construction of a cannery, even though a cannery may be an acceptable trust use. Piers, wharves and warehouses that once served commercial navigation but no longer can serve modern container shipping may have to be removed or converted to a more productive trust use. Historic public trust uses may have been replaced by new technologies. Antiquated structures on the waterfront may be an impediment rather than a magnet for public access and use of the waters. Public trust uses may and often do conflict with one another. The state and local tidelands grantees, as administrators of their respective public trust lands, are charged with choosing among these conflicting uses, with the Legislature as the ultimate arbiter of their choices.

For all these reasons, a list of uses or a list of cases without more may not be as useful as an analysis of public trust law applied to a specific factual situation.

III. The Leasing of Tidelands

A few principles established by the courts are instructive in analyzing under the public trust doctrine the leasing of public trust lands for particular uses. For example, it was settled long ago that tidelands granted in trust to local entities may be leased and improved if the leases and improvements promote uses authorized by the statutory trust grant and the public trust. Leases for the construction of wharves and warehouses and for railroad uses, i.e., structures that directly promote port development, were approved early in the 20th century.[11] Later, leases for structures incidental to the promotion of port commerce, such as the Port of Oakland=s convention center, were held to be valid because although they did not directly support port business, they encouraged trade, shipping, and commercial associations to become familiar with the port and its assets.[12] Visitor-serving facilities, such as restaurants, hotels, shops, and parking areas, were also approved as appropriate uses because as places of public accommodation, they allow broad public access to the tidelands and, therefore, enhance the public=s enjoyment of these lands

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[11] *San Pedro etc. R.R. Co. v. Hamilton* (1911) 161 Cal. 610; *Koyner v. Miner* (1916) 172 Cal. 448; *Oakland v. Larue Wharf & Warehouse Co.* (1918) 179 Cal. 207; *City of Oakland v. Williams* (1929) 206 Cal. 315.

[12] *Haggerty v. City of Oakland* (1958) 161 Cal.App.2d 407, 413-414.

historically set apart for their benefit.[13]

[13]*Id.* at p. 414; *Martin v. Smith* (1960) 184 Cal.App.2d 571, 577-78.

These cases provide three guidelines for achieving compliance with the public trust when leasing tidelands for construction of permanent structures to serve a lessee=s development project: (1) the structure must directly promote uses authorized by the statutory trust grant and trust law generally, (2) the structure must be incidental to the promotion of such uses, or (3) the structure must accommodate or enhance the public=s enjoyment of the trust lands. Nonetheless, when considering what constitutes a trust use, it is critical to keep in mind the following counsel from the California Supreme Court: The objective of the public trust is always evolving so that a trustee is not burdened with outmoded classifications favoring the original and traditional triad of commerce, navigation and fisheries over those uses encompassing changing public needs.[14]

IV. Promotion of Trust Uses and Public Enjoyment of Trust Lands

[14]*National Audubon Society v. Superior Court, supra,* at p. 434.

Installations not directly connected with water-related commerce are appropriate trust uses when they must be located on, over or adjacent to water to accommodate or foster commercial enterprises. Examples include oil production facilities, freeway bridges and nuclear power plants.[15] Hotels, restaurants, shops and parking areas are appropriate because they accommodate or enhance the public=s ability to enjoy tide and submerged lands and navigable waterways. The tidelands trust is intended to promote rather than serve as an impediment to essential commercial services benefitting the people and the ability of the people to enjoy trust lands.[16]

Nevertheless, the essential trust purposes have always been, and remain, water related, and the essential obligation of the state is to manage the tidelands in order to implement and facilitate those trust purposes for all of the people of the state.[17] Therefore, uses that do not accommodate, promote, foster or enhance the statewide public=s need for essential commercial services or their enjoyment of the tidelands are not appropriate uses for public trust lands. These would include commercial installations that could as easily be sited on uplands and strictly local or Aneighborhood-serving@ uses that confer no significant benefit to Californians statewide. Examples may include hospitals,

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[15]See *Boone v. Kingsbury* (1928) 206 Cal.148, 183; *Colberg, Inc. v. State of California ex rel. Dept. Pub. Work, supra,* at pp. 421-22; and *Carstens v. California Coastal Com.* (1986) 182 Cal.App.3d 277, 289.

[16]*Carstens v. California Coastal Com., supra,* at p. 289.

[17]Joseph L. Sax, AThe Public Trust in Stormy Western Waters,@ October 1997.

supermarkets, department stores, and local government buildings and private office buildings that serve general rather than specifically trust-related functions.

V. Mixed-Use Developments

Mixed-use development proposals for filled and unfilled tide and submerged lands have generally consisted of several structures, including non-trust use structures or structures where only the ground floor contains a trust use. While mixed-use developments on tidelands may provide a stable population base for the development, may draw the public to the development, or may yield the financing to pay for the trust uses to be included in the development, they ought not be approved as consistent with statutory trust grants and the public trust for these reasons. These reasons simply make the development financially attractive to a developer. Projects must have a connection to water-related activities that provide benefits to the public statewide, which is the hallmark of the public trust doctrine. Their failure to achieve this goal simply to make a development financially attractive sacrifices public benefit for private or purely local advantage. A mixed-use development may not be compatible with the public trust, not because it may contain some non-trust elements, but because it promotes a Acommercial enterprise unaffected by a public use@[18] rather than promoting, fostering, accommodating or enhancing a public trust use.[19] That use, however, need not be restricted to the traditional triad of commerce, navigation and

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[18]*City of Long Beach v. Morse* (1947) 31 Cal.2d 254, 261.

[19]*Haggerty v. City of Oakland, supra,* at pp. 413-14.

fishing. It is an evolving use that is responsive to changing public needs for trust lands and for the benefits these lands provide.[20]

Moreover, commercial enterprises without a statewide public trust use may violate the terms of statutory trust grants. Typically, grants allow tidelands to be leased, but only for purposes Aconsistent with the trust upon which said lands are held.@ This term is not equivalent to Anot required for trust uses@ or Anot interfering with trust uses.@ Since leases of tidelands must be consistent with statutory trust grant purposes, leases which expressly contemplate the promotion of non-trust uses rather than trust uses would not comply with the terms of the trust grants.

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[20]*National Audubon Society v. Superior Court, supra,* at p. 434.

For these reasons, non-trust uses on tidelands, whether considered separately or part of a mixed-use development, are not mitigable. That is, unlike some environmental contexts where developments with harmful impacts may be approved so long as the impacts are appropriately mitigated by the developer, in the tidelands trust context, mitigation of a non-trust use has never been recognized by the courts. To the contrary, the California Supreme Court has said that just as the state is prohibited from selling its tidelands, it is similarly prohibited from freeing tidelands from the trust and dedicating them to other uses while they remain useable for or susceptible of being used for water-related activities.[21]

VI. Incidental Non-Trust Use

[21] *Atwood v. Hammond* (1935) 4 Cal.2d 31, 42-43.

All structures built on tide and submerged lands should have as their main purpose the furtherance of a public trust use. Any structure designed or used primarily for a non-trust purpose would be suspect. Mixed-use development proposals, however, frequently justify non-trust uses as Aincidental@ to the entire project. The only published case in California in which a non-trust use of tidelands has been allowed focused on the fact that the real or main purpose of the *structure* was a public trust use and that the non-trust use would be incidental to the main purpose of the structure.[22] In this context, the court noted that because the real or main purpose of the structure was to promote public trust uses, non-trust groups could also use the facility, but the non-trust uses must remain *incidental* to the main purpose of the structure.[23] This is the state of the law, and it is supported by good policy reasons as well. If the test for whether a non-trust use is incidental to the main purpose of a development were not applied on a structure by structure basis, pressure for more dense coastal development may increase as developers seek to maximize the square feet of allowable non-trust uses. Disputes may arise as to how to calculate the square footage attributable to the proper trust uses versus non-trust uses, with open waterways and parking garages likely being the dominant trust uses and structures being devoted to non-trust uses.

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[22] *Haggerty v. City of Oakland, supra,* at p. 413.

[23] *Ibid.*

It is beyond contention that the state cannot grant tidelands free of the trust merely because the grant serves some public purpose, such as increasing tax revenues or because the grantee might put the property to a commercial use.[24] The same reasoning applies to putting tidelands to enduring non-trust uses by building structures on them. Accordingly, the only enduring non-trust uses that may be made of tidelands without specific legislative authorization are those incidental to the main trust purpose applied on a structure by structure basis. Each structure in a mixed-use development on tidelands must have as its primary purpose an appropriate public trust use. If its real or main purpose is a trust use, portions of the structure not needed for trust purposes may be leased temporarily to non-trust tenants, provided that the non-trust use is incidental to the main purpose of the structure.

VII. The Role of the Legislature

The Legislature is the representative of all the people and, subject to judicial review, is the ultimate arbiter of uses to which public trust lands may be put. The Legislature may create, alter, amend, modify, or revoke a trust grant so that the tidelands are administered in a manner most suitable to the needs of the people of the state.[25] The Legislature has the power to authorize the non-trust use of tidelands. It has done so rarely, and then on a case-

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[24]*National Audubon Society v. Superior Court, supra,* at p. 440.

[25]*City of Coronado v. San Diego Unified Port District* (1964) 227 Cal.App.2d 455, 474.

specific basis.[26] Many of its actions have been a recognition of incidental non-trust uses or of a use that must be located on the tidelands. When these legislative actions have been challenged in court, the courts, understandably, have been very deferential, upholding the actions and the findings supporting them.[27]

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[26]For example, in Chapter 728, Statutes of 1994, the Legislature authorized tidelands in Newport Beach to continue to be put to non-trust uses for a limited term after it was determined that the tidelands had been erroneously characterized and treated as uplands by the city due to incorrect placement of the tidelands boundary.

[27]See, e.g., *Boone v. Kingsbury, supra,* at p. 183 and *City of Coronado v. San Diego Unified Port District, supra,* at pp. 474-75; but see *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 206-07, 212.

The Legislature has provided a statutory framework for the leasing of tidelands for non-trust uses by the cities of Long Beach and San Francisco grounded on findings that the tidelands are *not required for* (San Francisco) or *not required for* and *will not interfere with* (Long Beach) the uses and purposes of the granting statute.[28] Where, as in these two statutes, the Legislature has authorized in general terms the use of tidelands for non-trust purposes, the statutes= provisions must be interpreted so as to be consistent with the paramount rights of commerce, navigation, fishery, recreation and environmental protection. This means that the tidelands may be devoted to purposes unrelated to the common law public trust to the extent that these purposes are incidental to and accommodate projects that must be located on, over or adjacent to the tidelands. These non-trust uses are not unlimited, for there are limits on the Legislature=s authority to free tidelands from trust use restrictions.[29]

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[28]Ch. 1560, Stats. 1959; Ch. 422, Stats. 1975. These statutes also provide for, *inter alia*, the lease revenues to be used to further trust uses and purposes.

[29]*Illinois Central R.R. Co. v. Illinois, supra,* at pp. 452-54.

To ensure that the exercise of the Long Beach and San Francisco statutes is consistent with the common law public trust, the tidelands to be leased for non-trust uses must have been filled and reclaimed and no longer be tidelands or submerged lands and must be leased for a limited term. The space occupied by the non-trust use, whether measured by the percentage of the land area or the percentage of the structure, should be relatively small. Finally, any structure with a non-trust use should be compatible with the overall project. Findings such as these are necessary because legislative authorizations to devote substantial portions of tidelands to long-term non-trust uses have generally been considered by the courts as tantamount to alienation.[30]

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[30]*Atwood v. Hammond, supra,* at p. 42; see also *Illinois Central R.R. Co. v. Illinois, supra,* at pp. 454-53.

In several out-of-state cases, specific, express legislative authorizations of incidental leasing of publicly-financed office building space to private tenants solely for the purpose of producing revenue have been subject to close judicial scrutiny, although they did not involve tidelands trust use restrictions.[31] One case involved construction of an international trade center at Baltimore=s Inner Harbor with public financing where legislation expressly permitted *portions* of the structure to be leased to private tenants for the production of income. Another was a condemnation case where the statute authorizing the New York Port Authority to acquire a site on which to build the World Trade Center was challenged on the basis that it allowed *portions* of the new structure to be used for no other purpose than the raising of revenue. In both cases, opponents of the projects argued that a publicly financed office building should not be permitted to have *any* private commercial tenants even though the respective legislatures had expressly allowed incidental private use of each building. The state courts in both Maryland and New York held that so long as the primary purpose of the office building was for maritime purposes connected with the port, legislation authorizing the leasing to private tenants was valid.[32] Although both cases involve challenges to financing and condemnation statutes and do not involve the public trust, they are instructive because they demonstrate the importance to the courts, even in the context of public financing and condemnation, that when a portion of a structure is to be

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[31] *Lerch v. Maryland Port Authority* (1965) 240 Md. 438; *Courtesy Sandwich Shop, Inc. v. Port of New York Authority* (1963) 12 N.Y.2d 379.

[32] *Ibid.*

leased for the purpose of raising revenues to offset expenses, this incidental non-public leasing must have been legislatively authorized.

VIII. Exchanges of Lands

Situations where a local government or a private party acquires a right to use former trust property free of trust restrictions are rare.[33] In order for such a right to be valid, the Legislature must have intended to grant the right free of the trust and the grant must serve the purpose of the trust. Public Resources Code section 6307 is an example of the rare situation where abandonment of the public trust is consistent with the purposes of the trust. Section 6307 authorizes the Commission to exchange lands of equal value, whether filled or unfilled, whenever it finds that it is Ain the best interests of the state, for the improvement of navigation, aid in reclamation, for flood control protection, or to enhance the configuration of the shoreline for the improvement of the water and upland, on navigable rivers, sloughs, streams, lakes, bays, estuaries, inlets, or straits, and that it will not substantially interfere with the right of navigation and fishing in the waters involved.@ The lands exchanged may be improved, filled and reclaimed by the grantee, and upon adoption by the Commission of a resolution finding that such lands (1) have been improved, filled, and reclaimed, and (2) have thereby been excluded from the public channels and are no longer available or useful or susceptible of being used for navigation and fishing, and (3) are no longer in fact tidelands and submerged lands, the lands are thereupon free from the public

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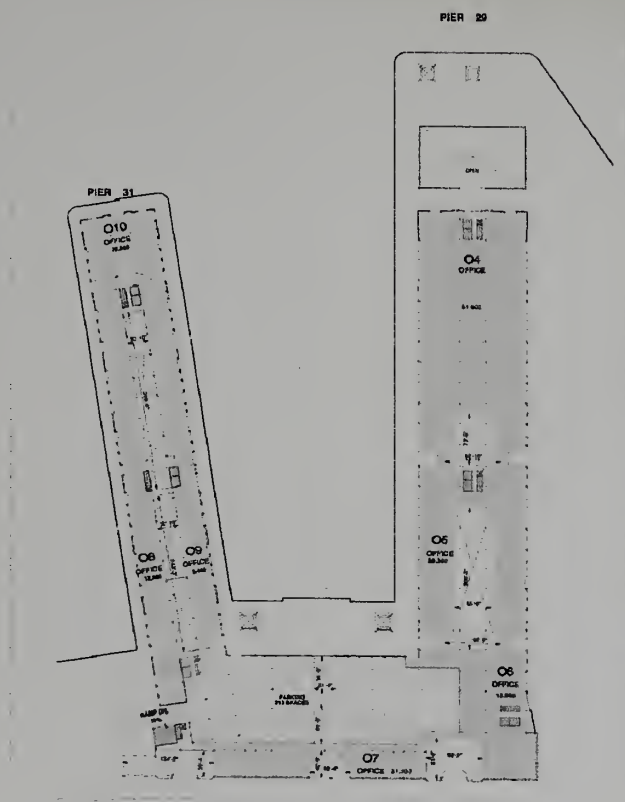
[33]*National Audubon Society v. Superior Court, supra,* at p. 440.

trust. The grantee may thereafter make any use of the lands, free of trust restrictions.

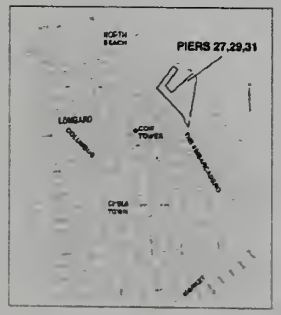
In order for such an exchange of lands to take place, the Commission must find that the lands to be exchanged are no longer available or useful or susceptible of being used for navigation and fishing, taking into consideration whether adjacent lands remaining subject to the trust are sufficient for public access and future trust needs; that non-trust use of the lands to be freed of the public trust will not interfere with the public=s use of adjacent trust lands; and that the lands that will be received by the state in the exchange not only are of equal, or greater, monetary value but also have value to the tidelands trust, since they will take on the status of public trust lands after the exchange. Only then can the Commission find that the transaction is in the best interests of the state, that the exchange of lands will promote the public trust and that it will not result in any substantial interference with the public interest in the lands and waters remaining.

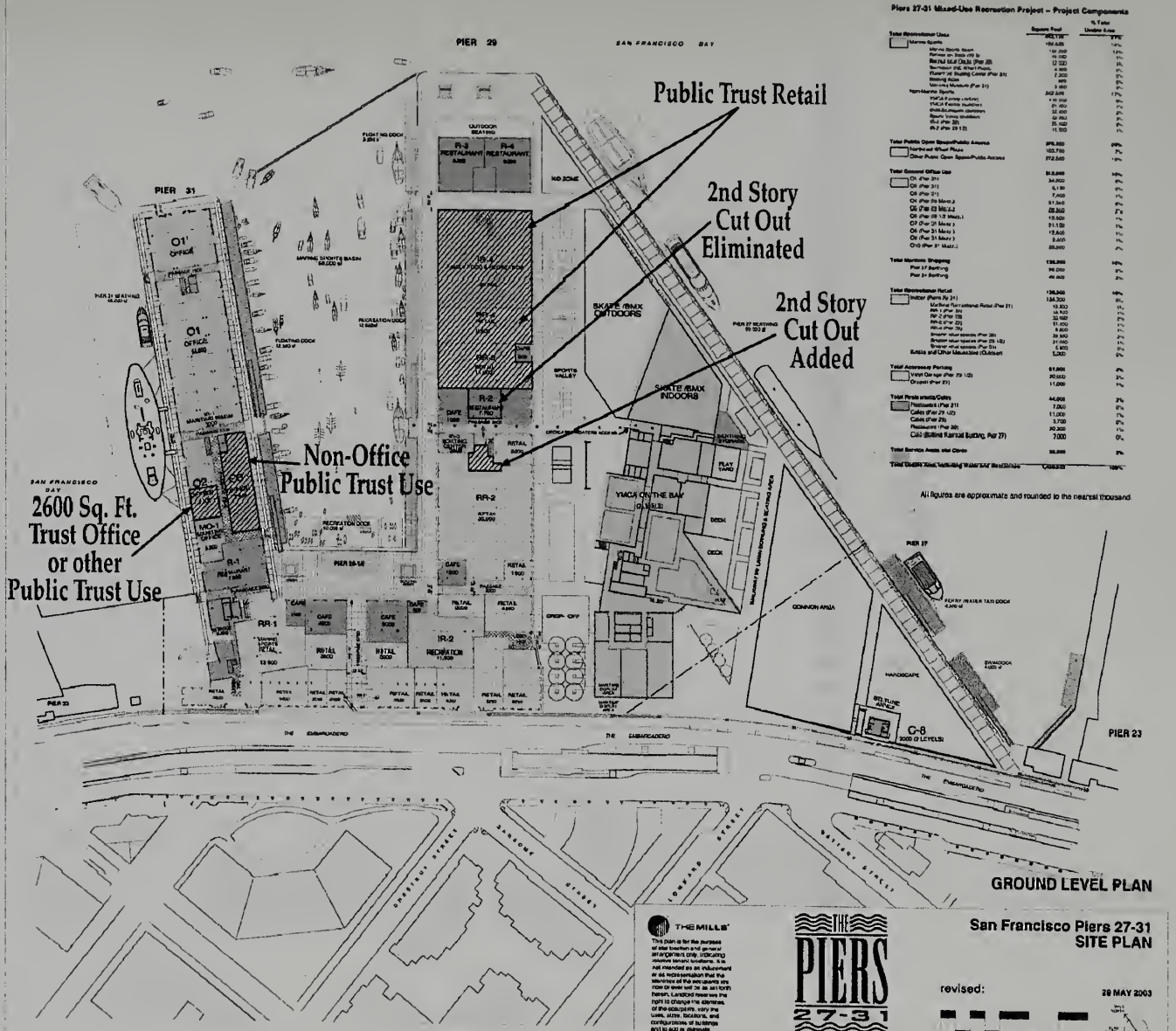
EXHIBIT C

JUNE 6, 2003 SITE PLAN



UPPER LEVEL PLAN





GROUND LEVEL PLAN

Piers 27-31 Mixed-Use Recreation Project – Project Components

All figures are approximate and rounded to the nearest thousand.

THE MILLS

This plan is for the purpose of site location and general arrangement only, indicating massive tenant locations. It is not intended as an inducement or as representation that the tenancies of the occupants are now or ever will be as set forth herein. Landlord reserves the right to change the identities of the occupants, vary the uses, sizes, locations, and configurations of buildings and to add or eliminate buildings and improvements.

THE PIERS 27-31
SAN FRANCISCO, CALIFORNIA

San Francisco Piers 27-31
SITE PLAN

revised: 28 MAY 2003

0 50' 100' 150' 200' 250'

EXHIBIT D

JUNE 18 SQUARE FOOTAGE OF USES BY PIER AND OVERALL

Piers 27-31 Mixed-Use Recreation Project

All square footages are gross (see note re: Office square feet)

	22-Apr-03	6-Jun-03	Net Change	Explanation
Total Recreational Uses	469,000	432,625	(36,375)	
Marine Sports Basin	168,000	168,000	-	
Other Recreation	301,000	264,625	(36,375)	Considered Non-Trust Use by State Lands Commission
YMCA Facility (indoor)	110,000	110,000		
YMCA Facility (outdoor)	21,300	21,300		
BMX/Skatepark (outdoor)	32,000	32,000		
Sports Valley (outdoor)	43,200	43,200		
IR-2 (Pier 29 1/2)	11,000	11,000		
Marine Sports (center, docks, kiosk)	33,525	40,125		All floating docks in basin dedicated to marine sports
Swimdock (NE Wharf Plaza)	4,000	4,000		
Maritime Museum (Pier 31)	3,000	3,000		
Total Public Open Space/Public Access	373,200	368,500	(4,700)	New passageways added, others reconfigured, so net gain
Northeast Wharf Plaza	103,700	103,700		
Other Public Open Space/Public Access	269,500	264,800		
Total Maritime Office Use	-	6,496	6,496	Requested by State Lands Commission, created in Pier 31 Shed
MO-1 Maritime Office	-	3,584	*	*This figure represents a preliminary scale-up from net sf to gross sf;
MO-2 Maritime Office or Trust Use	-	2,912		to be refined with construction drawings.
Total General Office Use	245,280	224,000	(21,280)	Considered Non-Trust Use by State Lands Commission
O1 (Pier 31)	42,448	11,200	112.00% **	**As above, figure represents a preliminary scale-up from net sf to gross sf;
O2 (Pier 31)	17,472	26,768	scale-up factor	to be refined with construction drawings; intent is to permit up to
O3 (Pier 31)	56,224	3,696		200,000 sf (net rentable) of general office to be leased at the site.
O4 (Pier 29 Mezz.)	31,696	57,120		NOTE: In terms of net sf, the reduction has gone from 219,000 to 200,000.
O5 (Pier 29 Mezz.)	15,568	29,680		Service core, corridors and restrooms are counted separately herein.
O6 (Pier 29 1/2 Mezz.)	23,632	15,120		
O7 (Pier 31 Mezz.)	14,336	23,520		
O8 (Pier 31 Mezz.)	11,200	14,000		
O9 (Pier 31 Mezz.)	32,480	10,416		
O10 (Pier 31 Mezz.)	n.a.	32,480		
Total Maritime Shipping	70,000	142,500	72,500	Pier 31 berthing not counted before
Pier 27 Berthing	70,000	90,000		
Pier 31 Berthing	n.a.	48,000		
Ferry/Water Taxi Dock	n.a.	4,500		
Total Recreational Retail	111,000	171,300	60,300	Considered Trust-Consistent by State Lands Commission
Indoor Retail	106,000	50,000		
Kiosks, Pushcarts, and other	5,000	11,000		
Total Accessory Parking	62,800	61,000	(1,800)	Net Increase resulted from other changes
Valet Garage (Pier 29 1/2)	50,000	50,000		
Dropoff (Pier 27)	12,800	11,000		
Total Restaurants/Cafés	34,000	51,400	17,400	Considered Trust-Consistent by State Lands Commission
Restaurant (Pier 31)	7,000	7,000		
Restaurant or Trust Use(Pier 31)	n.a.	7,400		
Cafés (Pier 29 1/2)	9,700	11,000		
Cafés (Pier 29)	n.a.	3,700		
Restaurant (Pier 29)	12,500	20,300		
Café (Beltline Railroad Building, Pier 27)	2,000	2,000		
Total Service Areas and Cores	25,000	25,000	-	
Total Usable Area, Including Water and Mezzanines	1,390,280	1,482,821	92,541	Pier 31 berthing not counted before, corrections and rounding
Total Site Footprint, not counting new fill (floating docks	732,200	732,200		Open Space/Public Access (not counting NE Wharf Plaza) is 36.2% of the Site

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SAN FRANCISCO
PORT COMMISSION

JUNE 24, 2003
MINUTES OF THE MEETING

MEMBERS, PORT COMMISSION

HON. MICHAEL HARDEMAN, PRESIDENT
HON. KIMBERLY BRANDON, VICE PRESIDENT
HON. MICHELA ALIOTO-PIER
HON. SUE BIERMAN
HON. WILFRED HSU

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION

MINUTES OF THE MEETING
JUNE 24, 2003

1. ROLL CALL

Commission President Michael Hardeman called the meeting to order at 3:12 p.m. The following Commissioners were present: Michael Hardeman, Kimberly Brandon, Michela Alioto-Pier, Sue Bierman and Wilfred Hsu.

2. APPROVAL OF MINUTES - June 12, 2003 Special Meeting

Commissioner Hardeman noted that the June 12th meeting concluded at 7:05 p.m., not 7:02 as indicated in the minutes.

Commissioner Brandon moved approval; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor. The minutes of the June 12, 2003, Special Meeting were adopted.

3. EXECUTIVE

A. Executive Director's Report

- New Port Commission Hearing Room
  Mr. Rhett acknowledged the following people who were involved in the design of the Port Commission Hearing Room (PCHR) for all their hard work: Tom Elliott Fisch, the interior designers of the room; Salter and Associates and MCSI were responsible for the audiovisual. Plant Construction and their subcontractors were responsible for the construction of the Ferry Building and were responsible for the build out of the PCHR. He also acknowledged the Ferry Building Investors, particularly Terry Regan and Chris Meany, for their work with Port staff and its consultants. He also thanked John Zoranovich and the City Bureau of Architecture for lending him to the Port as the manager of the design and construction of the PCHR.

  Mr. John Zoranovich introduced members of his team. He thanked the Commission for the opportunity and privilege to serve on the historic project. He introduced SMWM represented by John Long and Andrew Wilhelm, the master architects for the entire building design and the architects for the PCHR in particular which was incredibly complex and difficult project fraught with budgetary problems, etc. Doug Tom and A. Brevinsky of Tom Elliott Fisch were the designers of the PCHR.

  Mr. Rhett indicated that a copy of the Ferry Building book written by Nancy Olmstead will be provided to all the members of the team that were involved in the design and construction of the PCHR in appreciation for all their efforts.

- Commendation for former Commissioners Denise McCarthy and Brian McWilliams
  Commissioners Hardeman and Brandon presented former Commissioner McCarthy a plaque in appreciation for her many years of service as a Commissioner at the Port. Former Commissioner McCarthy indicated that during tenure at the Port, Port staff has helped her tremendously and they have been nothing but wonderful. It is unfortunate of what has been on the newspapers lately. The Port is a wonderful department and a wonderful organization. She also thanked people in the community, particularly Tom Creedon, Chris Martin and others. She was lucky to be on the Commission at a time when there were a lot of challenges and a lot of intense projects. She thanked the Mayor for the opportunity to work at the Port.

  Commissioner Hardeman congratulated Brian McWilliams for being elected to the Executive Board of the San Francisco Labor Council. Commissioner Hardeman mentioned that the Port appreciated Mr. McWilliams expertise on the waterfront and his expertise as a former president of the International Longshoremen Warehouse Union. Commissioners Hardeman and Brandon presented former Commissioner McWilliams a plaque in appreciation for his many years of service as a Port Commissioner.

  Former Commissioner Brian McWilliams indicated that the Port has been operating under some dark clouds the last few days. He knows how demoralizing that must be for everyone and he was convinced that Port staff can overcome this diversity without great damage and get back to the business of running a port. Inspite of that, he appreciated the opportunity to express his deepest gratitude to the Commissioners and Port staff for their high caliber of professionalism and uncompromised dedication, both to the Port and to its mission. His tenure as a Port Commissioner taught him more than just respect for Port staff and he was proud to have had the opportunity to serve at the Port. He has gotten to know Port staff personally and feels exceptionally privileged to have worked at the Port, and witnessed the accomplishments of hard and arduous work that can only be explained to their benefit. He thanked the Commission and Port staff for the flattering proclamation and informed staff that they deserve the credit.

- July 4th Waterfront Celebration
  On Friday, July 4th, Mayor Willie Brown and the City & County of San Francisco will host the annual Independence Day celebration from Aquatic Park to Pier 39. This year's July 4th fireworks display and day-long celebration throughout the Fisherman's Wharf area are expected to draw hundreds of thousands of spectators to the waterfront. Pier 39, Ghirardelli Square and the San Francisco Maritime Park will each host activities that include live music, great food, maritime activities and fun for the entire family. The attendance is anticipated to exceed 150,000 people. In order to accommodate this large crowd, Port staff continues to work with all appropriate City agencies to minimize the impact on local neighborhoods and to maximize the benefit for local businesses. The 2003 sponsors include the City & County of San Francisco, the Port of San Francisco, Jeep Brand, KTVU Channel 2 Fox Network, Clear Channel Radio, Pier 39 Ghirardelli Square, Golden Gate Disposal and Recycle and Macy's.

- Port Security Grant
  Maritime Director Peter Dailey indicated that security of our nation's seaports is of

vital importance in light of world events. The Port of San Francisco with its 7.5 miles of urban waterfront and its diverse portfolio of activities is a great responsibility in terms of security for the Port. A year ago, Port staff applied for and was awarded a $500,000 Transportation Security Administration (TSA) grant by the Federal government for the Port to complete a vulnerability and security assessment of port facilities and terminals. Through an RFP process, the Port hired a security firm of Parsons Brinckerhoff (PB) to complete the security assessment. The final security assessment is nearly completed. Staff and the consultant will be briefing the Commission next month as to its findings and recommendations. In the middle of the security assessment process, a $170 million federal port security grant program was announced. Parsons Brinckerhoff has done enough work on the security assessment to recommend to the Port to apply to TSA for federal grant money for security improvements to the Pier 35 cruise terminal, Downtown Cruise Terminals, and Pier 80 cargo terminal. There was $170 million in this award program and 1136 applicants. Last week, U.S. Homeland Security Secretary Tom Ridge announced that the Port of San Francisco was awarded $3.5 million from the TSA for security enhancements to its cruise, cargo and ferry terminals. The money will be used for passenger processing facilities, new signage, new fences, new gates, improved lighting guard facilities, close circuit TVs to meet federal mandates from TSA and U.S. Coast Guard. Staff will seek Commission's approval next month to formally ask permission to accept these grants. A lot of work has gone into the process of obtaining these monies. He thanked Mike Nerney and John Davey from the Maritime staff who did the paperwork with BP. He also thanked Taline Sanassarian, Government Affairs Manager, who worked closely with our congressional delegations in Washington, D.C.

Executive Director Wong reported that today's Port Commission meeting is being held in its rightful home, the Ferry Building, which Mayor Brown just last week officially re-opened. This meeting marks a new chapter in the 140-year old history of the Port of San Francisco. The renovation of this building and other parts of the waterfront are impressive for the architectural and engineering accomplishments they represent and how they help reunite the citizens of the City with the waterfront. As beautiful and impressive these structures are, he reminded the audience that it's the Port's 231 employees who are largely responsible for the renaissance along the waterfront. This is particularly timely in light of recent reports smearing the reputation of the Port and its staff. Port employees are not thanked enough for their hard work and dedication that has resulted in such important accomplishments.

As we wrap up another fiscal year, the Port can look back with pride at the opening of the Ferry Building and two new Ferry Terminals, the development agreements for Piers 1-½, 3 and 5, the Piers 27-31 Recreation Project, the Piers 30-32 cruise terminal that will bring San Francisco into the forefront of the international cruise industry, and the opening of Rincon Park just to name a few. This past year alone, Peter Dailey and his maritime staff, presented the Port with its busiest cruise season in decades. With the limited budget they had, they secured a lot of business for San Francisco. The Port is an unbelievable place to be and he's proud to be part of it. He asked the Commission to join him in thanking Port staff for their hard work and service to the City.

4. ADMINISTRATIVE SERVICES

A. Request for approval of the Executive Director's compensation for FY 2003/2004. (Resolution No. 03-41)

Human Resources Manager Kathy Mallegni presented the item and requested Commission's approval.

Commissioner Hardeman noted that the reduction in pay for Port staff is not a reflection of their abilities but due to the budget constraints that the City is facing.

ACTION: Commissioner Brandon moved approval; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor. Resolution No. 03-41 was adopted.

5. REAL ESTATE

A. Request for approval of assignment of Lease No. L-10445 from Kira Makagon to San Francisco Pier 33, LLC, and approval of sublease between San Francisco Pier 33, Inc. and Leo Chowdhury. (Resolution No. 03-45)

Senior Property Manager Phil Williamson presented the item and requested Commission's approval.

ACTION: Commissioner Brandon moved approval; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor. Resolution No. 03-45 was adopted.

6. PLANNING & DEVELOPMENT

A. Request for approval of Exclusive Right to Negotiate Agreement with the International Museum of Women (IMOW) for the development and long-term lease of Pier 26 located on the Embarcadero between Harrison and Bryant Streets. (Resolution No. 03-42)

Assistant Deputy Director Kirk Bennett presented the item and requested Commission's approval.

Chris Yelton, International Museum of Women, thanked the Commission for their support and guidance throughout the process. On behalf of the Board of Directors and museum staff, she thanked the Commission for solidifying this agreement. They are looking forward to working with the Commissioners, the Port staff and the City in making this historical facility a grand success for the City and the world. She reiterated Kirk's comments in terms of the value the museum will bring to the City, the bay area and the world. The waterfront will not only be an incredible site for the museum but the museum will also bring an incredible impact to the bay area. They are excited to bring educational content to boys and girls, women and men in the City as well as become a community resource for the bay area plus the benefit of bringing people to the waterfront and providing access to the waterfront as well as bringing in a new revenue stream to the City and preserving our history at Pier 26. The museum will have a positive impact on the lives of boys and girls, women and men and catalyze positive change for the world.

Commissioner Alioto inquired about IMOW's reason for choosing Pier 26 for the museum. Noreen Hughes, Vice President of the Board, replied that none of the other sites were large enough at the time to meet their program. Pier 26 provides them the visibility they believe the museum needs in order to succeed. They will be challenged by capturing the interest of people who don't think they are concerned about women's issues or an audience that may not have thought about the history of the world through a gender lens. They believe that Pier 26 is the best site in the City.

Commissioner Alioto asked if a part of the museum is designated to the role women played in maritime. Ms. Hughes replied that they have had some discussions on that matter. They are proposing a women-in-the-sea exhibit that would be open to the public to encourage people to explore the site and give unprecedented access to the site along the waterfront and also interest them in the history of women in the sea.

Commissioner Alioto asked about IMOW's ideas on raising the $24 million for the project by 2005. Mr. Scott Lewis, project manager for the museum, replied that in the current economic times, it would be a challenge but they believe that they will reach it. They have been working with two different fundraising firms in terms of developing the strategy and contacts that one needs in order to get the basic pyramid structure. They believe that the subject matter is very wide. This is not about art, it's not just about history, it's not just about signs. It's all encompassing in its purest form, it's about half the world. They believe it's about the entire world no matter how we interact. They have have already started the fundraising and once the ERN is assigned, they will physically have the site they can work with. Their fundraising will pick up speed quickly.

Commissioner Alioto asked if the fundraising will be done not only within the City but outside as well. Mr. Lewis replied that the fundraising will be done all over the world as it will be the international museum of women. Their intent is to bring in exhibit designers and receive input from people all over the world. They expect the fundraising to follow that same pattern; not just in the bay area or in California but all over the nation and all over the world.

Commissioner Bierman noted that she was privileged to be invited a year ago to an exhibit that Elizabeth Colton had at the Presidio. She had an art exhibit of paintings and drawings by women from all over the world. It was a pleasure to walk through it and see what women were thinking about, drawing about and painting about their own concerns. It was a lovely exhibit. Elizabeth Colton has great dreams ahead.

Ms. Chris Yelton invited the Commission to celebrate this exciting and historical moment tomorrow from noon to 1:30 at the Pier 24-½ annex.

ACTION: Commissioner Brandon moved approval; Commissioner Bierman seconded the motion. All of the Commissioners were in favor. Resolution No. 03-42 was adopted.

B. Request for approval of the Schematic Designs for James R. Herman International Cruise Terminal and Mixed Use Development located on Piers 30-32 and Condominium Project located on a portion on SWL 330 at Bryant and Beale Streets. (Resolution No. 03-43)

Project Manager John Doll indicated that the Waterfront Design and Advisory Committee (WDAC) has reviewed and recommended approval of the schematic drawings, with no recommendation as to the arrangement of uses within the podium of the condominium project. Mr. Doll requested Commission's approval of the schematic drawings for the cruise terminal and mixed use project at Pier 30/32 and the condominium project on a portion of SWL 330 with the understanding that the uses on the podium of the condominium project podium will be reviewed by the Planning Department and Planning Commission as part of the Conditional Use Permit process.

Maurice Coccacia, Vice President of Lend Lease and managing representative for SF Cruise Terminal LLC, indicated that they have been working on this project for over four years. They are very excited about the project and very pleased with the design. They worked closely with the Port's Waterfront Design Advisory Committee as well as the BCDC's Design Review Board on the pier design over the last year. They have developed and refined a scheme that they believe not only meets the commercial parameters of the project but will also add a valuable asset to the Port and to the South Beach neighborhood as well as provide significant public access to the southern waterfront. Similarly, they have worked very closely with the WDAC and also the Planning Department with the schematic design for the condominium project. He requested Commission's approval of the schematic design for the project. Mr. Coccacia noted that Brian Lee from Skidmore Owens & Merrill (SOM) will present the pier design and Dan Howard from Fisher Friedman will present the condominium design.

Mr. Brian Lee mentioned that they will develop the project to satisfy programmatic requirements and issues of how to dispose the program on the site and how to create open spaces and places for people to come to and the architectural character of the project. They understand that this site presents a great opportunity for the City and the Port to have a waterfront venue for the James R. Herman International Cruise Ship Terminal and to take that piece and integrate it with the fabric of the city. The proposed Bryant Street Pier project is a mixed-use project, which includes the James R. Herman International Cruise Terminal on Pier 30/32. The pier site is approximately 11 acres in size. The proposed program of pierside uses is as follows:

- Cruise terminal 100,000 s.f.
- Office space 370,000 s.f. on the second and third levels.
- Retail space 180,00 s.f.
- Open space 215,000 s.f., above and beyond the 30% required on the site.
- Parking 425 cars, buried in the center of the site.

To accommodate the proposed mix of uses, the existing pier would require a partial reconfiguration and structural upgrade. A lagoon would be cut out of the pier to create an open water attraction for the retail and open space uses and there would be recreational boat berthing along the south side of the pier.

The proposed terminal is a two-level structure proposed at the northeast corner of the pier. Passengers would embark, disembark, be ticketed and check baggage from the facility. Two berths would be created, one on the east side at approximately 1000 foot length and one on the north at approximately 850 foot length. Passengers would enter on the first

level from the lagoon area via an atrium on the building's southern side. They would then take escalators to the second level for ticketing and boarding. The terminal's ground level would be devoted primarily to terminal operations and ship servicing, while the second floor would function as the primary public space. When the cruise terminal is not in operation, some of the space would be available for special events.

The project would include a grocery store and neighborhood servicing retail, multiple restaurants, a multi-screen cinema, and a variety of other retail uses. The retail uses would largely be on the ground floor, and be focused around the lagoon and along the Embarcadero.

The project's open space would include the following components:

- Lagoon – the water basin within the pier and the surrounding walkway. There would also be a stepped down edge to allow small craft access.
- Promenade – public walkway orientated to the south with pedestrian amenities and landscaping following the alignment of Brannan Street, and a triangular plaza that steps down from the promenade about midway along its length.
- Eastern & Northern Aprons – these are the working aprons of the pier, where the architectural character would be derived from the functions of the cruise terminal. The aprons would be used to service cruise ships when in port and open to the public at other times.
- Pier extension – the extension at the south east corner of the pier for cruise ship berthing.
- Second-level terraces – three terraces, one on either side of the terminal building and a third in the general alignment of the Spear Street corridor. All three terraces connect the inner lagoon with the outside edges of the pier.

Commercial office will be located on the second and third levels including the terminal building.

Vehicular access would be from the northwest corner of the site at Bryant Street. The parking would be in a four-story, 425 space structure separated from the Embarcadero Promenade by a layer of commercial space. Cruise terminal taxi-drop off and bus service would be further eastward, next to the cruise terminal facility.

Mr. Dan Howard, Fisher Friedman and Associates, executive architects for the Bryant Street Seawall Condominium Project, indicated that they are part of the team of Moore Ruble Yudell from Santa Monica. His colleague Michael DeVers deserves a significant amount of credit along with John Ruble for the design of the building. Mr. Howard indicated that the proposed condominium project is located on Seawall Lot 330, which is bounded by the Embarcadero, Bryant Street and Beale Street. The condominium site is approximately 22,600 s.f. located in the corner of the seawall lot at the intersection of Bryant and Beale Streets. SWL 330 contains a total of 123,956 s.f. and the remainder of the site is not part of this project but will be brought forward by the Port at a later date. The project consists of a single tower that would contain 135-145 residential units and parking at a ratio of one space per unit. The building is proposed to be 220 feet in height with mechanical plant above. The first three levels of the building would be a combination

of lobby, parking and residential. The main entrance through the lobby would be at the corner of Bryant and Beale Streets and would be a two-level height at this corner. Residential space would occur along the first three levels of the street facades, mostly with two-level units of which some would have individual street entrances, others of which would connect through the interior. Parking and loading access would be from Beale Street. The condominium project also includes a concierge, gym, swimming pool, and communal open space on the podium. The majority of the condominium project would be two-bedroom units with some one and three bedrooms. Most units would have balconies. The intent of the tower design is to have it appear slender at its upper stories. The following describes the size of the floor plates:

- The podium level is three stories tall and approximately 22,600 s.f. each level;
- Level 4 is approximately 12,500 s.f.
- Levels 5 through 11 are approximately 10,400 s.f.;
- Levels 12 through 16 are approximately 9,700 s.f.; and
- Levels 17 through 22 are approximately 9,100 s.f.

Commissioner Bierman commented about James Herman for whom the international cruise terminal is being named. Mr. Herman was close to the longshoremen union leader, Harry Bridges, who live two doors from her in the 60's. Things were tough for them politically but they were all strong and fun people. She learned a lot from them. She was thrilled that the cruise terminal is named after Jimmy Herman.

Steve Reilly, Red's Java House, indicated that they have been working with the developer for the entire project. The developer has done a terrific job of balancing the needs of the working pier and also the community regarding service and public access. They support the design 100% and urged the Commission to adopt the design.

Earl Gee, San Franciscans for a Healthy Waterfront, strongly urged the Commission to reject the schematic design until air, water and traffic impacts are mitigated. With the integrity of the Port at stake, the Port Commission should not operate in a rubber stamped manner, denying an important matter such as this the intense scrutiny it deserves. Not a single recommendation of the Bay Area Air Quality Management District to mitigate air quality impacts has been implemented in the proposed schematic. Not shoreside power, crucial to mitigating the impacts of deadly cruise ship emissions, not the use of low sulfur fuel when operating in the San Francisco Bay to minimize the cancer causing diesel particulate which lodges deep inside our lungs. Not the implementation of transit subsidies, parking fees and incentives to reduce motor vehicle trips, traffic and emissions from office and non-office use. What does this say about the Port's commitment to protecting the health of the citizens of San Francisco. All these measures should be required as conditions of approval to ensure implementation. The resolution passed by the Commission two weeks ago contains no mandates, no timelines, and no regulatory authority. The notion that these serious health threatening issues can be solved by working groups is misguided and naïve. For the Port to embrace environmental mitigation in order to water it down and to make it ineffective goes against its very mission. In addition, Steve Thompson of the BCDC Design Review Board backs an absolute ban on cruise ship dumping and encourages the use of shoreside power. Emit Ghosh of the Waterfront Design Advisory Committee has reportedly voiced objections to the project containing too

much office space for the area outside of downtown, too much building intensity for too small a space and a lack of proper access at Bryant Street and on the Embarcadero. He also took issue with the statement made two weeks ago by a member of the Rincon Point South Beach CAC. The speaker said that San Franciscans for a Healthy Water was only concerned about protecting their views. The statement was not correct. The speaker should realize that private views are not protected. He takes time out of his day because he is genuinely concerned about the lack of mitigation to air, water and traffic impacts of this project. They hope that the Rincon Point South Beach CAC shares their commitment to building a better community by safeguarding the health of its residents and preserving the bay. San Franciscans for a Healthy Waterfront strongly urged the Commission to reject the schematic drawings until the air, water and traffic impacts are mitigated. His colleague, El St. John, couldn't be at the meeting as she is attending another meeting on this project.

Jeffrey Leibovitz, Rincon Point-South Beach CAC, indicated that the Port Commission is holding its first meeting in the restored Ferry Building, marking a historic occasion. The resolution that the Commission is about to pass is another historic moment. He served in the committee that drafted the RFP for this cruise terminal. They worked very hard with the community. Earl Gee, his neighbor, has attended some of their meetings. With all due respect, Mr. Gee brought up very important issues to the table. The resolution the Commission passed two weeks ago will go a long way to mitigate the industry that will be moving from Pier 35 to Pier 30/32. With these working groups, there will be an opportunity to send a message to the world industry that San Francisco is going to set the standard. San Francisco will be the leader in the industry and will be in the cutting edge. The working groups will tell the industry that they cannot dump in the bay. The working groups will tell the industry to find ways to mitigate the impacts of the cruise industry to the City. They have 4-5 years to work on those issues. The design of the pier has been refined and is magnificent. He thanked the Port and BCDC staffs for getting the developer and the architects to work with them and they produced a design that the committee asked for. The cruise terminal will put San Francisco back on the map again as a world destination for the entire tourist industry. He urged the Commission to pass the resolutions.

Rick Dickerson, Rincon Point-South Beach CAC chairman, commended the developer and Port staff for working hard to bring to the Commission, the neighborhood and to the City a project that will serve as a wonderful regional hub for the cruise ship industry and for entertainment and office use. Similar to the Pacific Bell Park, the cruise terminal will fit in nicely into the neighborhood. From a neighborhood standpoint, it will be a wonderful north end to the south beach neighborhood on the waterfront. The committee had a great deal of input over the last few years. Most of the things they have asked for have been incorporated into the project. The project is well-planned and well thought out. With the working groups and the Ballpark Transportation Coordinating committee helping to integrate the traffic patterns in the area, it will be a very successful project for the City and a wonderful project for the neighborhood. He urged the Commission to support the project.

Ernestine Weiss congratulated everyone who worked on the project for producing a beautiful design of the pier. However, she was concerned about the traffic. She wondered

if a study on the impacts of the traffic has been done.

ACTION: Commissioner Brandon moved approval; Commissioner Alioto seconded the motion. All of the Commissioners were in favor. Resolution No. 03-43 was adopted.

C. Approval of an Exchange of the Public Trust and Burton Act Trust that would remove the public trust and Burton Act trust from approximately 22,600 square feet of unimproved real property located at the intersection of Bryant and Beale Streets, being the westernmost corner of Seawall Lot 330, and would place the public trust and Burton Act trust on an approximately 10.34 acre site located between Maryland Street, Cesar Chavez Street, and 24th Street, on the eastern portion of the parcel commonly known as the Western Pacific parcel. (Resolution No. 03-44)

Project Manager John Doll indicated that this item is a request for approval of an exchange agreement that lifts the public trust designation from approximately 22,600 s.f. on the westernmost portion of SWL 330, known as the condo site and places that trust designation on a portion of a parcel known as the Western Pacific Site which is situated between Pier 80 and the Potrero Power Plant. Currently, the trust prohibits the sale of this condo site and prohibits residential development. Under the purchase and sale agreement approved by the Port Commission on March 25, the Port would sell the condo site to SFCT and they would construct the condo project. The Port would participate in the sales proceeds from individual condo units which funds will be used for the cruise terminal project on Pier 30/32. Furthermore, the sale of the condo site will partially fund the Brannan Street Wharf. To allow the development of the condo site, the Port must make a determination that the condo site is no longer needed for trust uses and purposes. The condo site is no longer needed for the trust because it is land locked and surrounded by primarily residential development and it does not provide a feasible opportunity for development of a trust-related use. The land to be exchanged into the trust must have a value equal to or greater than the value to be exchanged out of the trust and must be a qualitative value to the trust. The condo site has been appraised at $9.3 million; it's highest and best use is residential development. Port staff has identified a parcel that is not currently subject to the trust. This is the 10.34 acre western pacific site and it is proposed that the trust will be placed on this site. The WP site has been valued at $10.7 million and in light of the progress that has been made to target small container carriers and non-container carriers to Pier 80 which has resulted in increased demand for maritime and waterfront related industrial uses at Pier 80, this site will serve as an expansion to Pier 80. Consequently, the WP site is considered useful and necessary for the trust. The trust exchange is important to the Port because (1) it lifts the public trust on a portion of SWL 330 and would allow residential use; (2) it allows the development of the condo project, which helps fund the cruise terminal project and Brannan Street Wharf; (3) it encourages maritime trust-consistent use for the western pacific site. He requested Commission's approval of the trust exchange. Once approved, the exchange agreement must be approved by the Board of Supervisors scheduled to be heard next month and the State Lands Commission's approval is targeted for August.

Jeffrey Leibovitz, Rincon Point-South Beach CAC, indicated that the Brannan Street Wharf initially was going to be built with public funds and will take anywhere from 10-20 years to build. They negotiated a deal with the developer if they were allowed to build the

condominium to use a portion of the proceeds to go into the fund to offset public monies. San Francisco will get a 54,000 s.f. plaza regardless of whether the cruise terminal gets built. He urged the Commission to pass the resolution.

Rick Dickerson, Rincon Point-South Beach CAC, indicated that this resolution is part of the overall package of building the cruise terminal, having the condo development and having the Brannan Street Wharf built earlier than anticipated. He urged the Commission to approve the resolution.

Commissioner Brandon asked what portion of the WP site would serve as the receiving parcel for the trust. Mr. Doll replied that the parcel is approximately 10.34 acres on the eastern most portion of the WP site.

Commissioner Brandon asked why the public trust was not placed on the Muni site. Mr. Doll replied that in their discussions with the State Lands staff, they indicated that it was not necessary to place the public trust on the Muni Metro site.

Commissioner Brandon indicated that when the Port sold the land to Muni, one of the conditions was the trust would be moved to that site. If the trust is put on that land, it would become a 66-year lease instead of an outright sale. Legal Counsel Neil Sekhri replied that at the time the Muni deal was negotiated, the WP site was a potential site for the trust. The trust was removed from WP site because at the time there were findings that it was not necessary for the trust. State Lands was skeptical about putting the trust back since they have made findings that it wasn't necessary. Because of the increased in cargo at Pier 80, staff made a case to State Lands that the area closer to the water is required for the trust and they agreed. Staff argued strenuously with State Lands to have the trust put on the entire WP site including the Muni site but State Lands position was that the Muni site was not useful for trust purposes. They are not willing to consider it at this point, however, there's still a possibility in the next few years if the Port makes a case that the Muni site would be useful for the trust purposes.

Commissioner Brandon asked what that meant in connection with Muni. Mr. Sekhri replied that if State Lands does not agree to put the trust back on the Muni site within three years or so, the property goes back to Muni in fee. Currently, Muni's lease is not for 66 years but it's for as long as they it used for a transit yard. If the trust is not put on the land within seven years from the time the Muni deal was negotiated, Muni will have use of the land in perpetuity for any use that they want.

Commissioner Brandon reiterated that if within three years, the Port does not state a case to State Lands that the trust should be put on the Muni site, the Port would lose that site. Mr. Sekhri concurred.

ACTION: Commissioner Brandon moved approval; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor. Resolution No. 03-44 was adopted.

D. Informational Presentation by SF Piers 27-31, LLC ("Developer") on Revisions to the Preferred Alternative Project for the Piers 27-31 Mixed Use Recreation Project following State Lands Commission Action.

Development Project Coordinator Lynda Swanson presented the Developer's Revised Preferred Alternative provided in response to State Lands Commission's (SLC) ruling of June 2 which found the project to be consistent with the Public Trust and the Burton Act. It is also required by the Exclusive Right to Negotiate (ERN) Performance Benchmark. The Developer team will address the changes noted in the Staff Report. In summary, they have refocused the YMCA to become more maritime oriented, reduce certain uses in Piers 29 and 31 they found to be non-trust consistent and put in place uses that SLC's staff determined to be more trust consistent. Specifically, in Pier 29 building and bulkhead, they converted former indoor recreation and recreation retail to uses that are more traditionally trust related. In Pier 31, they cut general office space, increased Trust uses and increased public access in the structure to enhance historic elements. In Pier 29 & bulkhead, they converted former indoor recreation or recreation retail to uses they find Trust-consistent; reduced non-Trust related uses in 29 and Bulkhead & enhanced historic elements.

Ms. Swanson indicated that each major project that is undertaken at the Port on former tidelands must be consistent with a public trust doctrine, the Burton Act and the Transfer Agreement, which are the legislative trust documents which give the Port Commission its duty to uphold the trust values of its property. Each of the major projects the Port has undertaken since the 1997 Waterfront Land Use Plan was approved have met those requirements. In year 2000, BCDC and the Port agreed on a new Special Area Plan. It was negotiated to provide the Port and BCDC a means for reconciling longstanding sources of conflict and achieving greater consistency and certainty in project development. A major aspect of the agreement was a new policy regarding Bay fill that would make it possible for the Port to develop its piers and the Port would meet certain requirements and timetables for building new public plazas (at Piers 30-32 and Piers 27-31) and taking down certain piers.

The Special Area Plan set out the process by which BCDC can determine whether it agrees with the Port's conclusion that at an early stage of a given project it is consistent with the Public Trust Doctrine and the Port's legislative Trust grant. The Special Area Plan requires BCDC to seek an advice letter from the Executive Director of SLC & use that letter in making such a determination. Piers 27-31 was the first project to use this process. The Port sought BCDC's views as to how best to move forward with this approach and, collectively, it was decided to seek SLC's views as to the process as well. SLC agreed that the "early determination" process was superior to a SLC hearing.

Determining Trust consistency is not as simple or straight-forward a task as obtaining a building permit. It is an evolving area of regulation, relying both on common law and on case law as courts rule on the flexibility that Trust grantees have in developing the former tidelands in conformance with both modern needs and the Public Trust Doctrine. As a unique, urban waterfront, with piers rather than beaches, and immediately adjacent to a highly dense city, interpreting uses that are in conformance with the Trust can be unusually challenging.

In the context of a mixed-use project, the Port, BCDC and SLC have found interpreting the Trust a challenge. SLC analyses involve reviewing a project's architecture, land use and site planning based on existing case law and interpretations by the Attorney General's

office, and in determining whether the project furthers the public's enjoyment and use of the waterfront. As a result, they themselves note that it is not until a project is actually fairly far along in terms of development, that they can render a judgment as to whether each element fits the public trust doctrine requirements. The ballpark, the Ferry Building rehabilitation, Pier 1 rehabilitation, and most recently, Pier 1.5-3-5 rehabilitation all went through similarly complex analyses far into their process.

Prior to starting any of these most recent conversation with SLC's staff, the Port had discussed the 27-31 project with both BCDC & SLC. As early as the Waterfront Land Use Plan and the Waterfront Land Use Plan EIR, when the Port was putting forth its vision for (a) preserving essential maritime-industrial reserve lands and (b) identifying mixed-use sites for a new set of uses that would provide revenues for Port mission, BCDC & SLC provided comments.

SLC commented on the Waterfront Land Use Plan EIR; however, they stated an important fact that the propriety of non-trust uses on trust lands cannot be predetermined in the abstract, absent a specific proposal. They require a specific proposal to examine. SLC has a representative on BCDC. That representative voted on the Special Area Plan in August 2002 when 27-31 was identified as a mixed use active recreation site.

SLC staff was notified of the availability of the subsequent RFP/RFQ issued in November 1999; and received full copies of the Amended RFP/RFQ in August 2000. On June 12, 2001, SLC met with Port staff and Legal counsel; no specific feedback was given on the project. SLC and BCDC were brought into the project as soon as the Port had a firm Revised Preferred Alternative (both the YMCA and outdoor recreation had changed by that time over what had been in the original proposal and the first Revised Preferred Alternative), notably, in September 2002, when a half-day presentation and site tour of 27-31 was organized for both SLC and BCDC representatives. Beginning in February and March 2003, Port staff met with Save the Bay, which had no specific reservations, BCDC staff and SLC staff. Telephone conversations were exchanged and drafts of legal arguments. On April 10, BCDC & Port began to meet to work out the specific BCDC Special Area Plan process; this led to contacts with SLC, with staffs of SLC Commissioners, with Port Commission and others to work through the issues. On April 29, a major presentation was held at Pier 1 for SLC and BCDC. Between April 29 and June 2, more than a dozen teleconferences, face-to-face meetings, or major presentations were held.

In the end, the SLC staff noted that they could only review a project once it was sufficiently well defined for them to respond. For example they wanted to know how much of the 2nd floor of the historic buildings would be visible from which vantage points and at what distances from outside the building; how wide the passageways were; how many stairs & elevators would take visitors up to the 2nd floor; where and how big such elements as a Boating Center, the Maritime Museum, cafes & restaurants, the YMCA's meeting rooms, the locations of their locker rooms, how many sq. ft. were in the YMCA for the Ropes and Adventure Center, etc. They took the position that each pier building, separate from the bulkhead, had to be examined for proper balance; and they sought to identify specific Public Trust uses relating to water, uses that were water-related or water-enhanced were found Trust-consistent. They sought to find ways to adjust the YMCA,

Pier 29 and Pier 31 to obtain such a result. Some of what they did was surprising to Port staff, in light of other decisions they have made. However, they worked in good faith and Mills did the same. SLC sought to achieve a balance of Public Trust uses, by pier and overall, that they felt best met the letter and spirit of the PTD, using as guidance specific advice from the Attorney General's office. And, as with the other projects, the evolution of the Public Trust examination continues.

The Developer has taken the SLC's concerns and reactions and put forward a revised program, site plan and design that SLC has agreed meets the Public Trust. The Developer now brings this before the PC for its review as part of the next steps. SLC finding is not the last finding needed for Public Trust, both Port Commission and BCDC have the right to make a determination.

The Port Commission will hear about the changes from the Developer, and get a chance to hear the public's reaction. Port staff will negotiate changes to the Development Memorandum to reflect the new Revised Preferred Alternative. Port staff will obtain new financial pro formas. Because the proposed plan has made changes in what SLC views as Trust-consistent to achieve a balance between Trust & non-Trust uses, Port will be called on to examine Trust retail uses, and Trust recreation uses to find a balance that remains true to the PTD and still meets the Ports goals and requirements. Port Commission will receive legal advice from its Legal Counsel. There will be another public hearing where "findings" will be made and sent forward to BCDC, perhaps in the form of a Port "Preferred Alternative". BCDC then reviews the Port's determination of Trust consistency, considering the advice of the SLC, and similarly holds a public hearing to determine whether it concurs with the Port's determination.

David D'Onofrio, Development Director of Mills Corporation, indicated that piers team, YMCA of San Francisco, America True and the Mills Corporation are continuing their efforts to bring the same quality and excitement to Piers 27-31. The concept of the Piers 27-31 project has always been to create destination focused on maximizing public access to the bay, building portable recreation facilities unlike any other in the bay area that are accessible to everyone no matter what neighborhood, what city, what economic or socio-economic level, access to the bay unlike any other spot in the bay area. Since being awarded the project, they have been working with community groups across the city, local neighbors, concerned organizations and anyone who has an opinion and sat down and listened to their concerns about this project. They have listened and created a project that enhances the waterfront, blends into the fabric of the rejuvenated northeast waterfront and fits into the needs of the community, the City and all of California. It's a project that will draw people to the waterfront and will fit in with the projects along the Embarcadero and South Beach Area. He believes that the Piers 27-31 project is on its way towards its goals of creating something very unique for San Francisco. Since they last presented it to the Commission in April, they have been through vigorous negotiations with the State Lands staff which resulted in an approval on June 2 by the SLC of a redesigned project. Many changes of which were dictated by SL's staff. The current plan as Deputy Attorney General Alan Hager stated in a letter to SLC's Executive Director Paul Thayer is now currently consistent with the public trust as currently designed. The current plan is included in the staff report but it is different from April 22 plan.

Dawn O'Reilly, CEO, America True, pointed out that the principle outcome of the State Lands-Developer discussions was to redesign the YMCA to support more explicitly the maritime uses in the project. They dictated the addition of an emergency shower. To permit boaters to move easily between the YMCA's locker rooms and the Marine Sports Basin, the Developer widened a passageway through Pier 29, and added a new entrance to the YMCA, dedicated solely to use by participants in maritime sports. The Boating Center also was relocated to be alongside this passageway, bringing these functions closer together. The YMCA, which provides substantial program support to the Marine Sports Basin program, which will be initially managed by American True, will give priority to the use of various rooms within the YMCA for boating-related programs, including physical training, classroom space, and meeting space. Several rooms within the YMCA will be made available on a priority basis at least 51% of the time for groups participating in boating or other water-oriented recreation, and/or for environmental organizations conducting programs of education, preservation and recreation. Rooms within the YMCA Facility were modified to make them more usable by boating and other marine sports programs. For example, the Climbing Center has been redesigned to accommodate mariners learning to climb masts. Also, rotating displays of boats of various types will be located adjacent to the "bulkhead" portion of the YMCA to emphasize the primacy of marine sports at the project. An area for use by the Port's Maritime Division will be created adjacent to the YMCA, to aid the Port's handling of an estimated 100 vessels per year at the Pier 27 berth. In addition, a Nautical Center space within the YMCA Facility will be made available on a priority basis to crews as needed when a vessel is berthed at Pier 27.

Commissioner Bierman indicated that they have substituted 25,000 s.f. of family filled activity and the boating center with trust consistent retail. She was troubled that the bowling center was deleted from the plan because young people need entertainment. She asked what trust consistent retail means.

Mr. D'Onofrio indicated that as they continued their negotiations with SLC, approximately 60,000 s.f. of non-YMCA indoor recreation at the end of Pier 29 was deemed by SLC not to be consistent with the public trust because it was not water enhanced or water oriented, specifically, the bowling center. It was their opinion based on their readings of the public trust doctrine that if it was not water enhanced or water related, it's not consistent with the public trust and could not be on the project. It was specifically put to them if the bowling center is in, they do not get the approval of public trust consistency. They fought very hard with the plan because it was a consensus of two and a half years of meetings with the neighbors, meetings with the Port Commission staff and a lot of people to get to a plan and a blend and a mix of this project. It was incredibly unique. It is troubling to them as well but it was based on their position despite the Burton Act and the Transfer Agreement that that is not consistent with the public trust. Lawyers for both the City and the Port and Mills may disagree but it was presented to them that it was either to remove it or there was nothing.

Commissioner Bierman asked what constituted trust consistent retail and what substituted for the bowling area. Mr. D'Onofrio replied that trust consistent retail has been defined to them by SLC as visitor serving retail. They were not given a list or direction but it has to be visitor serving.

Commissioner Bierman asked the Commission and the executive director to obtain details about what is more important in the City and on the waterfront. The kids need something to do so they don't just hang out and what kind of retail competes with that. There are a lot of places to shop and restaurants to eat at but there are not many places for kids to have fun and exercise. She asked that we put pressure on the SLC staff.

Commissioner Alioto asked if the developer requested to put a maritime related activity on the pier and SLC told them no because they want retail instead. Mr. D'Onofrio replied that SLC staff's position was that the only recreation that would be allowed on Piers 27-31 would be either water enhanced or water related. The project has 186,000 s.f. of boats and lessons and access unlike any other in San Francisco. SLC staff argued very strongly that they don't want the gymnasium in the YMCA building. It took a long time for them to convince them that sailors and folks who access the water sometimes do something besides sail and access in the water. They were convinced of the benefits outside of that. If it was non-YMCA, non-Dawn Riley water recreation that is water enhanced or water oriented, they are still going to pursue that. They will continue to pursue it but their alternative was trust-consistent retail.

Commissioner Alioto applauded the developer's efforts during the difficult negotiation process with SLC. However, they couldn't figure out any other activity to take the place of the bowling alley so they concluded on putting more retail. Mr. D'Onofrio replied that they will continue to work on the plan. If they can't find another activity that is recreation that is water enhanced or water related, they will make every effort to put it out there in lieu of SLC direction. At one point, there was a suggestion that an ice rink would be trust consistent but Lt. Gov. Cruz Bustamante and Paul Thayer were not quite sure it was. Just because there's frozen water, it's not necessarily trust consistent.

Commissioner Hardeman indicated that without Commission's objections, Commissioner Bierman's suggestion would be followed through.

Mr. D'Onofrio indicated that there were two changes in Pier 29 that SLC staff directed them towards altering the recreation to trust consistent retail or cafés or restaurants. There was also 19,000 s.f. of office space that was removed from Pier 31 that is now either trust consistent café, restaurant, maritime office and increased public access. They did a good job of doing what the National Park Service was supposed to do by widening corridors and access points. They stand ready and willing to return to late April plan. Mills Corporation, YMCA and America True are trying to make something unique and special unlike anything else on the waterfront. They will work hard with Port staff, who's worked unbelievably hard to keep the goals and the desires of making this project unique and something the community and the City can really use..

Commissioner Alioto asked if there are any programs for cold water swimming. Mr. D'Onofrio replied that at the bottom of Pier 27 is a swim dock, at the corner of the northeast wharf plaza. Commissioner Alioto indicated that the dolphin club and southend rowing club have been a part of San Francisco for a long time. It is amazing to her what it does for people's self esteem. She asked if this activity will be incorporated into their program.

Sal Cisneros YMCA VP of Operations, replied that even with the changes, YMCA refocused its intention of what they want to accomplish. The fundamental core of this project is to bring San Franciscans to the waterfront. They are excited about this project coming forward because they can do different things for a variety of San Franciscans that they cannot do anywhere else. A variety of YMCAs have triathlon clubs and masters clubs that participates in cold water swims. He is also the executive director of the Embarcadero YMCA. One of their triathletes participated in the Alcatraz swim and placed 14th overall. They do a lot of course work in the bay and they anticipate this same type of programming at 27-31 facility.

Commissioner Alioto commented that this type of activity would be beneficial and a great motivator for young people who lives in different areas in the City.

Toby Levine, NEWAG Chair, indicated that the Northeast Waterfront Advisory Committee has been following this project since its inception, and was quite deeply involved in shaping the original Request for Proposal (RFP). The Project was designed as a total recreation project. However, over the course of the years, the development has become a mixed-use recreation project. The NEWAG has not taken a position on the current project. It is difficult to take a position due to the fact that the project changes so frequently. These changes are not the developer's fault, but are due to clarification and amplification of the regulatory environment, which in turn brings about changes to the mixed-use recreation project. Public and Port staff input has also brought changes to the project. The NEWAG met last week and had a presentation by the project sponsors. The Committee was pleased with many aspects including the following:

The Committee was pleased with the whole effort to restore the bulkhead buildings and the piers to the Secretary's Historic Standards. They felt that this effort is of great importance to the City's and the Port's enriched historic fabric. The Committee also appreciated the efforts made by State Lands and by the developer to open more of the historic pier sheds to the public visually and actually.

The NEWAG approved of the idea of looking at each pier individually, rather than the whole group of piers together, in terms of trust uses. They felt that this approach will make a better project. However, it should be noted, that for historic preservation purposes, Piers 29, 29-½ , and 31 will be viewed as a whole. Hopefully, this duality will not create complications for the project. The Committee was enthusiastic about the recreational benefits brought by America True and particularly with their willingness to work with the many water-oriented constituencies, and with the youth of San Francisco. The only way it is possible to maintain and to continue to have a water-oriented population is by starting with the young and providing access to adults, which America True does. America True becomes an essential part of the maritime infrastructure of San Francisco in somewhat the same way that the Conservatory of Music is so much a part of the musical infrastructure of San Francisco.

The NEWAG was pleased with the changes the YMCA has made in their project, making it more maritime and water-oriented. They believed that this water-oriented model YMCA will be unique and special throughout the United States, and it will bring folks from around the country to the water to recreate.

As the project continues to develop, old concerns will hopefully vanish as the project is fleshed out.

A number of speakers representing Pier 39 attended their June 18th Committee meeting. They were concerned about the increase in retail and restaurant uses in the project. Before the June 2nd meeting with State Lands, there had been 145,000 square feet of retail and restaurant uses. After the meeting that number had been increased to 222,400 square feet, or an increase of 77,400. The reason this happened is that State Lands disallowed commercial indoor recreation as a trust use, which meant dropping several recreation proposals. However, visitor oriented retail and restaurants are trust uses, so the changes were made. Hopefully, as the project is refined, and new ideas emerge, the visitor retail/café usage can be reduced and active recreation, especially aquatic uses, can be increased. This would bring the project more in alignment with the original RFP.

A number of the Committee members were concerned with the design of the open space and the YMCA building. As the project develops and meets the various design review boards, these concerns will be addressed.

Finally, she was concerned about the lack of clarity on the part of State Lands with regard to visitor oriented uses. "Visitor" is not clearly defined. This in turn makes it difficult to define a project. Local visitors will have different interests than tourist visitors. Local visitors love the ferry plaza market. Tourist visitors love Pier 39. These are very different projects, but both meets trust standards. So, who are the visitors to be at Piers 27, 29 & 31. Originally the Bay Area residents were the main source of visitors to the recreation project. With the increase in retail and restaurants as a trust use, she asked if we will be able to make this recreation project strong enough to support itself as a recreation project. Ms. Levine indicated that we need ideas on how the YMCA, American True and any other recreation that is allowed can fulfill the recreation project originally planned.

Nan Roth, Telegraph Hill Dwellers, pointed out that the public input on this issue of the Attorney General's letter and the State Lands Commission hearing was very limited. They have heard rumors for a week before she got her hands on a copy of the letter. The letter did not become public until four days before the hearing in El Segundo. The president of the Telegraph Hill Dwellers attended the hearing in El Segundo and was the only member of the public to appear. One of her primary concerns was the choice of replacing the bowling alley with retail and office space. The developer had the option of converting it to trust related recreation or trust acceptable recreation. She was happy that the Attorney General used the terminology of water dependent and water enhanced recreation. She has been involved with SPUR over the past several months which initiated a program to study ways of bringing more of this type of activity to the waterfront as development of the waterfront progresses and this particular need is ignored. There are many water dependent water enhanced activities. Most of them are very poorly served in San Francisco, some not served at all. The waterfront is being developed piece by piece and very little attention is being paid to this issue. The choice of converting the bowling alley would be such a stretch to have added more to the swimming portion of the YMCA. The swimming area is very limited. It is smaller than that of other YMCAs. This is the most obvious use when it comes to this site. It has no provision for diving or synchronized swimming. It only has a

four-lane lap pool, a play pool for children and a jacuzzi type pool. It is a very limited facility. It should be the centerpiece of the YMCA. She was also pleased that the Attorney General seemed to have in mind of approving the value of this project for San Franciscans that has been largely ignored. If you read the letter, you would agree with her that the widespread office use for this project are for two primary reasons: (1) the cost of the infrastructure work and (2) the historic preservation. They questioned the fact that they might exceed what was required for those purposes and whether the benefit of the public that it was receiving from the extraordinary amount of office space was sufficient.

7. NEW BUSINESS/PUBLIC COMMENT

Eula Walters, representing 2300 citizens who signed a petition that Ferry Park remains green, urged the Commission to rescind its May 27th vote to place the Yin and Yang sculpture in the middle of the walkway behind the Vaillancourt fountain.

Tom Creedon, Scoma's Restaurant, was deeply saddened to pick up the Sunday paper and saw Doug Wong's picture and the article about the Port. He has personally worked with the entire team that was pointed out in the article to have violated the public trust. Tom Meisenbach is fourth generation, Port maintenance staff. He met Alex Lee when he was a plumber before he went to Muni. Alex felt very strongly about Tom Petersen and brought him in. He worked with David Rauenbuehler and was so impressed. He is probably the brightest plumber he's run across. If you get into a study on exactly what happened, you'll probably find out that the staffing is incorrect. Dave has had to accumulate that much overtime in order to do his job. He's been at Fisherman's Wharf for 26 years; he's spent the last six years as president of the Fisherman's Merchants Association. He's had to work closely with these people to accomplish tasks for which there was no money. Many of the jobs that were accomplished by these people were jobs most likely would have gone out to a contractor. The association has been very pleased with Port staff's cooperation. Along with the reduction in staff, the amount of work has gone up astronomically because of the deferred and neglected maintenance. All of this pressure comes down to these people. This year, the Port employees have to incur reduction in pay. The study will show the fact that there are great people working for the Port.

Francisco Da Costa, Environmental Justice Advocacy, indicated that we shouldn't judge anyone. The court will know what's right and what's wrong. The Commission has been appointed to manage the 7.5 mile Port property. Heron's Head Park is a toxic dump as it is close to the PG&E plant. As director of the Environmental Justice Advocacy, if the Commission does not do anything about it, he will be forced to go to court and produce an injunction. Developers have presented their projects but input from the public is missing. Everybody should remember that this is public trust land. On behalf of the constituents of the State of California, the Commissioners have jurisdiction over this land. The citizens and constituents of the Bay Area and San Francisco should participate in the deliberations. He requested Mills Corporation to have air monitoring device so that the public knows exactly what's happening in that area.

Ernestine Weiss pointed out to the Commission the fact that there are no signs on the entire waterfront stating no biking or no skateboarding. People cannot walk on the waterfront comfortably. She asked that signs be placed on the waterfront. She also apprised the Ferry Building developer to put up signs on the building since they don't know if shops are open.

The Commission meetings have been moved to 3 p.m. and none of the public can attend the meetings. When it comes to an important matter like the Yin & Yang sculpture, there should be a hearing at 5:30 or 6 p.m. when people come home from work so they can attend the meeting and voice their opinion. The Lincoln Brigade statue does not belong in the park. It should be placed in Harry Bridges Plaza or somewhere along the waterfront. She urged the Commission not to place the statue in the park.

8. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Bierman moved approval; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor.

At 6:00 p.m., the Commission withdrew to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING AND ANTICIPATED LITIGATION MATTERS (Discussion Items)

a. Discuss existing litigation matter pursuant to Section (a) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (1 case):

- F. Alioto Company, Inc. et al. v. City & County of San Francisco, et al., Superior Court Petition CPF 03-503016.

b. Discuss significant exposure to litigation pursuant to subdivision (b) of California Government Code Section 54956.9 (1 case) (As Defendant and As Plaintiff)

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.
This session is closed to any non-City/Port representative. *

a. Property: Pier 94 Intermodal Container Transfer Facility (ICTF)
Person Negotiating: Port: Peter Dailey, Director of Maritime
*LB Railco: David Gavrich

b. Property: Piers 19/23
Person Negotiating: Port: Peter Dailey, Director of Maritime
*Big C Traders: Raymond Lynch

c. Property: Pier 3, Pier 31-½, and Pier 33
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Hornblower Yachts, Inc.: Terry MacRae

d. Property: Pier 96
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Sanitary Fill Company: Maurice Quillen
This item was taken off the calendar.

e. Property: Seawall Lot SWL 322-I
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Various RFP Respondents

f. Property: 1500 Sansome Street
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Negotiator to be Determined

g. Property: Pier 28– ½ Restaurant Opportunity Site
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Negotiator to be Determined

h. Property: Heron's Head Park @ Pier 98
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Literacy for Environmental Justice: Dana Lanza

9. RECONVENE IN OPEN SESSION

At 7:59 p.m., the Commission withdrew from executive and reconvened in open session.

ACTION: Commissioner Brandon moved approval to adjourn executive session and reconvene in open session; Commissioner Hsu seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner Brandon moved approval to not disclose any information discussed in executive session; Commissioner Hsu seconded the motion. All of the Commissioners were in favor.

10. ADJOURNMENT

ACTION: Commissioner Brandon moved approval to adjourn the meeting; Commissioner Bierman seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 8:00 p.m.